

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75- 7352

APPENDIX TO BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

No. 75 - 7352

Le ROY F. GILLEAD, et al,
Appellants,

v.

DEFENSE SUPPLY AGENCY, et al,
Appellees.

B
P/S

Appeal From The United States District Court
For The Southern District of New York

Appendix

Le ROY F. GILLEAD
Appellant Pro se, et al.
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Dated: August 25, 1975

4

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Date of Entries to Clerk or Court

Proceedings

Apr 12, 1973	Filed Complaint, Summons Issued
Apr 12, 1973	Plaintiff's motion for the appointment of an attorney
Jun 8, 1973	Court's memorandum Endorsement for appointment of attorney
Jun 5, 1973	Amended Complaint
Sep 28, 1973	Court's memorandum Endorsement for the amended complaint
Oct 2, 1973	Pre Trial Conference, Status of case submitted by plaintiff as requested by Court
Oct 26, 1973	Answer Filed
May 23, 1974	Plaintiff's motion for the appointment of an attorney
May 23, 1974	Pre Trial Conference, Status of case submitted by plaintiff as requested by Court
Sep 10, 1974	Pre Trial Conference, defendants to make motion and plaintiff to respond within time specified by Court.
Nov 6, 1974	Defendants' notice of motion to dismiss complaint
Nov 6, 1974	Defendants' memorandum of law in support of motion to dismiss
Dec 17, 1974	Plaintiffs' affidavit in opposition to motion to dismiss
Apr 11, 1975	Memorandum Opinion of the Court below

Pleadings

Facts stated in the answer, motion to dismiss the complaint, its memorandum of law and the Courts Memorandum Opinion are not consistent with the complaint. Therefore, appellants' brief restates the facts with evidence, documented.

Opinion *End of Appendix*

Other Records

Statutes and evidence cited in appellants' brief for the facts in complaint with emphasis on paras. 33-48 of the complaint, and enclosed are as follows:

- Executive Order 11246 Equal Employment Opportunity
- Executive Order 11375 Amending Executive Order 11246
- 41 CFR 60-1 Obligations of Contractors and Subcontractors
- 41 CFR 60-2 Order No. 4, Affirmative Action Programs
- Director, OFCC, questions and Answers on Order No. 4, April 1971
- Defendant No. 6, IOM, October 14, 1971, Status of AEP's at Contractor Facilities Not Reviewed On-Site
- Director, OFCC, Memorandum 4200, November 10, 1971, DCRN-V Memorandum - Status of AEP's at Contractor Facilities Not Reviewed On-Site (True Facsimile)
- Director, OFCC, Memorandum 4200, November 10, 1971, DCRN-V Memorandum - Status of AEP's at Contractor Facilities Not Reviewed On-Site (True Copy)
- DSA Memorandum, November 11, 1971, Status of AEP's at Contractor Facilities Not reviewed On-Site
- Plaintiff's Memorandum, October 18, 1971, Request for reaffirmation (First page)
- Employee Performance Appraisal and Rating, November 1, 1970 - October 31, 1971
- Employee Performance Appraisal and Rating, November 1, 1971 - October 31, 1972
- DSA Letter, October 12, 1973, Final Action of last two grievances of plaintiff
- Joint Economic Committee Report, May 5, 1975, The EEO Program For Federal Non-construction Contractors Can Be Improved (Excerpts)
- Standard Form 50, Notification of Personnel Action, Resignation

EXECUTIVE ORDER

11246

EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II - Nondiscrimination in
Employment by Government Contractors
and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. , 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24 , 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of Sept. 24 , 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24 , 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers of providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may;

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have compiled or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

Subpart E -- Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III - Nondiscrimination Provisions
in Federally Assisted Construction
Contracts

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

PART IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective 30 days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

September 24, 1965.

#

EXECUTIVE ORDER

11375

AMENDING EXECUTIVE ORDER NO. 11246,
RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SECTION 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the

basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

October 13, 1967.

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FEDERAL REGISTER

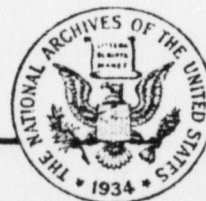
VOLUME 33 • NUMBER 104

Tuesday, May 28, 1968 • Washington, D.C.

PART II

Department of Labor
Office of Federal Contract Compliance

Obligations of Contractors
and Subcontractors



Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

REVISION OF CHAPTER

Chapter 60 of Title 41 of the Code of Federal Regulations was originally issued by the President's Committee on Equal Employment Opportunity for the purpose of implementing Executive Order 10925 (3 CFR, 1959-63 Comp., p. 448) which provided for the promotion and insurance of equal employment opportunity on Government contracts for all persons without regard to race, creed, color, or national origin. Subsequently, the Committee revised this part in order to implement, in addition, Executive Order 11114 (3 CFR, 1959-1963 Comp., p. 774) which provided certain amendments to Executive Order 10925 and extended its requirements to certain contracts for construction financed with assistance from the Federal Government. Parts II and III of Executive Order 11246 (30 F.R. 12319, Sep. 28, 1965) vested in the Secretary of Labor the functions related to Government contracts and Federally assisted construction contracts previously exercised by the President's Committee on Equal Employment Opportunity. Section 201 of Executive Order 11246 provides that the Secretary of Labor shall adopt rules, regulations, and orders as he deems necessary and appropriate to achieve the purposes of the order. Temporary regulations were adopted effective October 24, 1965 (30 F.R. 13441), continuing in effect the previous regulations of the President's Committee on Equal Employment Opportunity, and orders were issued effective June 1, 1966 (31 F.R. 6881), and May 9, 1967 (32 F.R. 7439).

On February 15, 1968, notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 3000) which included the substance of the aforesaid orders and other amendments and revisions. Persons interested in the proposals were given until March 15, 1968, to submit written data, views, or argument concerning them.

Having considered all relevant material submitted, I have decided to, and do hereby revise 41 CFR Chapter 60. As revised, 41 CFR Chapter 60 reads as follows:

PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

- Sec.
- 60-1.1 Purpose and application.
 - 60-1.2 Administrative responsibility.
 - 60-1.3 Definitions.
 - 60-1.4 Equal opportunity clause.
 - 60-1.5 Exemptions.
 - 60-1.6 Duties of agencies.
 - 60-1.7 Reports and other required information.

- Sec.
- 60-1.8 Segregated facilities.
 - 60-1.9 Compliance by labor unions and by recruiting and training agencies.

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

- 60-1.20 Compliance reviews.
- 60-1.21 Who may file complaints.
- 60-1.22 Where to file.
- 60-1.23 Contents of complaint.
- 60-1.24 Processing of matters by agencies.
- 60-1.25 Assumption of jurisdiction by or referrals to the Director.
- 60-1.26 Hearings.
- 60-1.27 Sanctions and penalties.
- 60-1.28 Show cause notices.
- 60-1.29 Preaward notices.
- 60-1.30 Contract ineligibility list.
- 60-1.31 Reinstatement of ineligible contractors or subcontractors.
- 60-1.32 Intimidation and interference.

Subpart C—Ancillary Matters

- 60-1.40 Affirmative action compliance programs.
- 60-1.41 Solicitations or advertisements for employees.
- 60-1.42 Notices to be posted.
- 60-1.43 Access to records of employment.
- 60-1.44 Rulings and interpretations.
- 60-1.45 Existing contracts and subcontracts.
- 60-1.46 Delegation of authority by the Director.
- 60-1.47 Effective date.

AUTHORITY: The provisions of this Part 60-1 issued pursuant to sec. 201, E.O. 11246 (30 F.R. 12319).

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

§ 60-1.1 Purpose and application.

The purpose of the regulations in this part is to achieve the aims of Parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, creed, color, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this part govern all disputes relative to a contractor's compliance with his obligations under the equal opportunity clause regardless of whether or not his contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all of the sanctions authorized by the order. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to Title VI of the Civil Rights Act of 1964. The rights and

remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract; neither do the regulations limit the exercise by the Secretary or Government agencies of powers not herein specifically set forth, but granted to them by the order.

§ 60-1.2 Administrative responsibility.

Under the general direction of the Secretary, the Director has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the order, except the power to issue rules and regulations of a general nature. All correspondence regarding the order should be directed to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, 14th and Constitution Avenue NW., Washington, D.C. 20210.

§ 60-1.3 Definitions.

(a) The term "administering agency" means any department, agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) The term "agency" means any contracting or any administering agency of the Government.

(c) The term "applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(d) The term "Compliance Agency" means the agency designated by the Director on a geographical industry or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the order as the Director may determine to be appropriate. In the absence of such a designation, the Compliance Agency will be determined as follows:

(1) In the case of a prime contractor not involved in construction work, the Compliance Agency will be the agency whose contracts with the prime contractor have the largest aggregate dollar value;

(2) In the case of a subcontractor not involved in construction work, the Compliance Agency will be the Compliance Agency of the prime contractor with which the subcontractor has the largest aggregate value of subcontracts or purchase orders for the performance of work under contracts;

(3) In the case of a prime contractor or subcontractor involved in construction work, the Compliance Agency for each construction project will be the agency providing the largest dollar value for the construction project; and

(4) In the case of a contractor who is both a prime contractor and subcontractor, the Compliance Agency will be determined as if such contractor is a prime contractor only.

(e) The term "construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(f) The term "contract" means any Government contract or any federally assisted construction contract.

(g) The term "contracting agency" means any department, agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(h) The term "contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

(i) The term "Director" means the Director, Office of Federal Contract Compliance, U.S. Department of Labor or any person to whom he delegates authority under the regulations in this part.

(j) The term "equal opportunity clause" means the contract provisions set forth in § 60-1.4 (a) or (b), as appropriate.

(k) The term "federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(l) The term "Government" means the Government of the United States of America.

(m) The term "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services", as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and (2) federally assisted non-construction contracts.

(n) The term "hearing officer" means the individual or board of individuals designated to conduct hearings.

(o) The term "modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(p) The term "Order" means Parts II, III, and IV of the Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive order amending such order, and any other Executive order superseding such order.

(q) The term "person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(r) The term "prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order.

(s) The term "recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(t) The term "rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

(u) The term "Secretary" means the Secretary of Labor, U.S. Department of Labor.

(v) The term "site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

(w) The term "subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(x) The term "subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(y) The term "United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

§ 60-1.4 Equal opportunity clause.

(a) Government contracts. Except as otherwise provided, each contracting agency shall include the following equal

opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, That in the event the contractor becomes involved in, or is threatened

RULES AND REGULATIONS

with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the

contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

(e) *Incorporation by operation of the order and agency regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts. The clause may also be applied by agency regulations to every nonexempt contract where there is no written contract between the agency and the contractor.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

§ 60-1.5 Exemptions.

(a) *General.*—(1) *Transactions of \$10,000 or under.* Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by

employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by § 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by § 60-1.40.

(b) *Specific contracts and facilities—*
(1) *Specific contracts.* The Director may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. The Director may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(2) *Facilities not connected with contracts.* The Director may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(c) *National security.* Any requirement set forth in these regulations in this part shall not apply to any contract or subcontract whenever the head of an agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Director may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60-1.6 Duties of agencies.

(a) *General responsibility.* Each agency shall be primarily responsible for

obtaining compliance with the equal opportunity clause, the order, the regulations in this part, and orders issued pursuant thereto. Each agency shall cooperate with the Director and shall furnish him such information and assistance as he may require in the performance of his functions under the order. Such information shall include compliance review reports, schedules of compliance reviews and any other information relevant to the administration of the order.

(b) *Agency program.* The head of each agency shall, subject to the prior approval of the Director, establish a program and promulgate procedures to carry out the agency's responsibilities for obtaining compliance with the order and regulations and orders issued pursuant thereto. Each agency head shall also designate a Contract Compliance Officer, who (unless otherwise approved by the Director) shall be appointed by the head of the agency from among the agency's executive personnel to whom the Executive Schedule applies, and such officer shall be subject to the immediate supervision of the head of the agency. All compliance reviews required pursuant to the regulations in this part and such other compliance reviews as the Contract Compliance Officer determines to be appropriate shall be conducted by him or his designee. The head of the agency or the Contract Compliance Officer may also designate a Deputy Contract Compliance Officer to assist the Contract Compliance Officer in the performance of his duties. The names of the Contract Compliance Officers and the Deputy Contract Compliance Officers, their addresses and telephone numbers, and any changes made in their designation shall be furnished to the Director.

(c) *Agency regulations.* The head of each agency shall prescribe regulations for the administration of the order and the regulations in this part. Agency regulations, directives and orders for such purpose must be submitted to the Director prior to issuance and may be enforced upon approval of the Director or 60 days after submission if not disapproved by the Director.

(d) *Award of contracts.* Sixty days after the effective date of the regulations in this part, each agency shall follow the procedures described below before the award of any nonexempt contract unless agency regulations providing alternative procedures have been issued or are under review by the Director in accordance with paragraph (c) of this section. Such alternative procedures may include monetary cutoffs and other limitations consistent with the agency resources and contracting processes.

(1) All Contracting Officers and officers approving applications for Federal financial assistance involving a construction contract shall notify the Contract Compliance Officer or appropriate Deputy as soon as practicable of the impending award of each nonexempt contract, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor, whether the prime con-

tractor and known subcontractors have previously held any Government contracts or federally assisted construction contracts subject to Executive Order 10925, 11114, or 11246, and whether the prime contractor has previously filed compliance reports required by Executive Order 10925, 11114, or 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.

(2) The Contract Compliance Officer or appropriate Deputy shall review the available information relative to the prospective prime contractor's equal opportunity compliance status and notify the Contracting Officer or Approving Officer of any deficiencies found to exist. A copy of such report shall be forwarded to the Director.

(3) Contracting Officers or Approving Officers shall: (i) Notify the bidder, offeror, or applicant of any deficiencies found to exist by the Contract Compliance Officer or appropriate Deputy, and (ii) direct any bidder, offeror or applicant so notified to negotiate with the Contract Compliance Officer and to take such actions as the Contract Compliance Officer may require.

(4) The award of any such contract shall be conditioned upon the Contract Compliance Officer's notification to the Contracting Officer or Approving Officer that the bidder, offeror or applicant has taken action or has agreed to take action satisfactory to the Contract Compliance Officer, appropriate Deputy, or the head of the agency as provided in § 60-1.20(b). Any such agreement to take action shall be stated in the contract, if the Contract Compliance Officer so requires.

(e) *Evaluations.* The Director may from time to time evaluate the programs, procedures, and policies of agencies in order to assure their compliance with the order and the regulations in this part and the compliance of prime contractors and subcontractors with the equal opportunity clause.

§ 60-1.7 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each agency shall require each prime contractor and each prime contractor and subcontractor shall cause its subcontractors to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with § 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes:

Provided, That any subcontractor being the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of subdivisions (i), (ii), and (iv) of this subparagraph.

(2) Each person required by § 60-1.7 (a) (1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with § 60-1.7 (a) (1), or at such other intervals as the agency or the Director may require. The agency with the approval of the Director may extend the time for filing any report.

(3) The Director, the agency or the applicant, on their own motions, may require a prime contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director, agency or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the agency, the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part. Any such failure shall be reported in writing to the Director by the agency as soon as practicable after it occurs.

(b) *Requirements for bidders or prospective contractors.*—(1) *Previous reports.* Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or at the outset of negotiations for the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed with the Joint Reporting Committee, the Director, an agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements. In any case in which a bidder or prospective prime contractor or proposed subcontractor which participated in a previous contract or subcontract subject to Executive Order 10925, 11114, or 11246 has not filed a report due under the applicable filing requirements, no contract or subcontract shall be awarded unless such contractor submits a report covering the delinquent period or such other period specified by the agency or the Director.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the agency or the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor

shall be required, prior to award, or after the award, or both, to furnish such other information as the agency, the applicant, or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§ 60-1.8 Segregated facilities.

(a) *General.* In order to comply with his obligations under the equal opportunity clause, a prime contractor or subcontractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, creed, color, or national origin cannot result. He may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. His obligation extends further to ensuring that his employees are not assigned to perform their services at any location, under his control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(b) *Certification by prime contractors and subcontractors.* Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, each agency or applicant shall require the prospective prime contractor and each prime contractor and subcontractor shall require each subcontractor to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt subcontract.

§ 60-1.9 Compliance by labor unions and by recruiting and training agencies.

(a) Whenever compliance with the equal opportunity clause may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such an agreement shall be given an adequate opportunity to present their views to the Director.

(b) The Director shall use his best efforts, directly and through agencies, contractors, subcontractors, applicants, State and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may

be engaged in work under contracts and subcontracts to cooperate with, and to comply in the implementation of, the purposes of the order.

(c) In order to effectuate the purposes of paragraph (a) of this section, the Director may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(d) The Director may notify any Federal, State, or local agency of his conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his judgment has failed to cooperate with himself, agencies, prime contractors, subcontractors, or applicants in carrying out the purposes of the order. The Director also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever he has reason to believe that the practices of any such labor organization or agency violates Title VII of the Civil Rights Act of 1964 or other provisions of Federal law.

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

§ 60-1.20 Compliance reviews.

(a) The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, creed, color, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the Contract Compliance Officer, appropriate Deputy or the agency head of such commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(c) The Compliance Agency shall have the primary responsibility for the conduct of compliance reviews. Agencies shall institute programs for the regular conduct of compliance reviews in accordance with the Director's guidelines,

and shall also conduct compliance reviews in accordance with any special requests or instructions of the Director. Compliance reviews may also be conducted by the Director. Compliance reviews should be conducted by qualified specialists regularly involved in equal opportunity programs.

(d) Each agency must include in the invitation for bids for each formally advertised supply contract which may result in a bid of \$1 million or more, a notice (in the form approved by the Director) to prospective bidders that if their bid is in the amount of \$1 million or more, the apparent low responsible bidder and his known first-tier subcontractors with the contract of \$1 million or more will be subject to a compliance review before the award of the contract. Before the award of any formally advertised supply contract of \$1 million or more, a pre-award compliance review of the prospective contractor and his known first-tier \$1 million subcontractors must be conducted by the Compliance Agency within 6 months prior to the award of the contract. If an agency other than the awarding agency is the Compliance Agency, the awarding agency will notify the Compliance Agency and request appropriate action and finding in accordance with this subsection. Compliance Agencies will provide awarding agencies with written reports of compliance reviews within 30 days following the requests. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found on the basis of such review to be able to comply with the equal opportunity clause or carry out an acceptable program for compliance as provided in paragraph (b) of this section.

§ 60-1.21 Who may file complaints.

Any employee of any contractor or applicant for employment with such contractor may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination in violation of the equal opportunity clause. Such complaint is to be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the agency or the Director upon good cause shown.

§ 60-1.22 Where to file.

Complaints may be filed with the agency or with the Director. Those filed with the Director may be referred to the agency for processing, or they may be processed in accordance with § 60-1.25.

§ 60-1.23 Contents of complaint.

(a) The complaint should include the name, address, and telephone number of the complainant, the name and address of the prime contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his authorized representative.

(b) Where a complaint contains incomplete information, the agency or the Director shall seek promptly the needed information from the complainant. In the event such information is not furnished to the agency or the Director within 60 days of the date of such request, the case may be closed.

§ 60-1.24 Processing of matters by agencies.

(a) *Complaints.* Where complaints are filed with the agency, the Contracts Compliance Officer shall transmit a copy of the complaint to the Director within 10 days after the receipt thereof.

(b) *Investigations.* The agency or Compliance Agency shall institute a prompt investigation of each complaint filed with it or referred to it, and shall be responsible for developing a complete case record. A complete case record consists of the name and address of each person interviewed, and a summary of his statement, copies or summaries of pertinent documents, and a narrative summary of the evidence disclosed in the investigation as it relates to each violation revealed. When a complaint is filed against a prime contractor or subcontractor who has contracts involving more than one agency, unless otherwise provided, the Compliance Agency shall conduct the investigation and make such findings and determinations as shall be appropriate for the administration of the order.

(c) *Resolution of matters.* (1) If the complaint investigation by the agency pursuant to paragraph (b) of this section shows no violation of the equal opportunity clause, the agency shall so inform the Director. The Director may review the findings of the agency, and he may request further investigation by the agency or may undertake such investigation as he may deem appropriate.

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference by the agency. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Director or the agency, with the approval of the Director, shall afford the contractor an opportunity for a hearing. If the final decision reached in accordance with the provisions of § 60-1.26 is that a violation of the equal opportunity clause has taken place, the Director, or the agency with the approval of the Director, may cause the cancellation, termination, or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the order.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of an agency or the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the agency or the Director.

(5) For reasonable cause shown, the Director or an agency head may reconsider or cause to be reconsidered any matter on his own motion or pursuant to a request.

(d) *Reports to the Director.* (1) Within 60 days from receipt of a complaint by the agency, or within such additional time as may be allowed by the Director for good cause shown, the agency or the Compliance Agency shall process the complaint and submit to the Director the case record and a summary report containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement as to the agency's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause;

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Director, including findings, will be forwarded to the Director within 10 days after the award for a postaward review.

(3) A written report of every other compliance review or any other matter processed by the agency involving an apparent violation of the equal opportunity clause shall be submitted to the Director. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

§ 60-1.25 Assumption of jurisdiction by or referrals to the Director.

The Director may inquire into the status of any matter pending before an agency or a Compliance Agency, including complaints and matters arising out of reports, reviews, and other investigations. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Director assumes jurisdiction over any matter, or an agency refers any matter he may conduct, or have conducted, such investigations, hold such hearings, make

such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Director shall promptly notify the agency of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by the agency. The agency shall take such action, and report the results thereof to the Director within the time specified.

§ 60-1.26 Hearings.

(a) *Informal hearings*—(1) *Purpose*. The Director or any agency head with the approval of the Director may convene such informal hearings as may be deemed appropriate for the purpose of inquiring into the status of compliance by any prime contractor or subcontractor with the terms of the equal opportunity clause.

(2) *Notice*. Contractors and subcontractors shall be advised in writing as to the time and place of the informal hearing and may be directed to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, the prime contractor or subcontractor shall attend and bring requested documents and records, or other requested information.

(3) *Conduct of hearings*. The hearing shall be conducted by hearing officers appointed by the Director or an agency head. Parties to informal hearings may be represented by counsel and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

(b) *Formal hearings*—(1) *General procedure*. The Director or the agency head, with the approval of the Director, may convene formal hearings pursuant to Subpart B of this part. Such hearings shall be conducted in accordance with procedures prescribed by the Director or the agency head. Reasonable notice of a hearing shall be sent, by registered mail, return receipt requested, to the last known address of the prime contractor or subcontractor complained against. Such notice shall contain the time and place of hearing, a statement of the provisions of the order and regulations pursuant to which the hearing is to be held, and a concise statement of the matters pursuant to which the action furnishing the basis of the hearing has been taken or is proposed to be taken. Copies of such notice shall be sent to all agencies. Hearings shall be held before a hearing officer designated by the Director or an agency head. Each party shall have the right to counsel, a fair opportunity to present evidence and argument and to cross-examine. Whenever a formal hearing is based in whole or in part on matters subject to the collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Any other person or organization shall be permitted to participate upon a showing that such

person or organization has an interest in the proceedings and may contribute materially to the proper disposition thereof. The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

(2) *Cancellation, termination, and debarment*. No order for cancellation or termination of existing contracts or subcontracts or for debarment from further contracts or subcontracts pursuant to section 209 of the order shall be made without affording the prime contractor or subcontractor an opportunity for a hearing. When cancellation, termination, or debarment is proposed, the following procedure shall be observed:

(i) *Notice of proposed cancellation or termination*. Whenever the Director, or the head of an agency or his designee upon prior notification to the Director, proposes to cancel or terminate, or cause to be canceled or terminated, in whole or in part, a contract or contracts or to require cancellation or termination of a subcontract or subcontracts, a notice of the proposed action, in writing and signed by the Director or head of the agency or his designee, shall be sent to the last known address of the prime contractor or subcontractor, return receipt requested. A copy of such notice shall be sent to all agencies. The prime contractor or subcontractor shall be given at least 10 days from the receipt of the notice either to comply with the provisions of the contract or subcontract or to mail a request for a hearing to the Director or the agency.

(ii) *Notice of proposed ineligibility*. Whenever the Director, or the head of an agency or his designee, upon prior notification to the Director, proposes to declare a prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order, a notice of the proposed action, in writing and signed by the Director or head of the agency or his designee, shall be sent to the last known address of the prime contractor or subcontractor, return receipt requested. A copy of such notice shall be sent to all agencies. The prime contractor or subcontractor shall be given at least 10 days from the receipt of such notice in which to mail a request for a hearing to the Director or the agency.

(iii) *Suspension during pendency of hearing*. Whenever the prime contractor or subcontractor requests a hearing in accordance with these provisions, his contracts or subcontracts may be suspended, in the discretion of the Director, during the pendency of the hearing.

(iv) *Hearing request*. If at the end of the 10-day period referred to in subdivision (i) of this subparagraph, no request has been received, the Director or the head of the agency may cancel, suspend or terminate or cause to be canceled, suspended or terminated such contracts or subcontracts. If at the end of the 10-day period referred to in subdivision (ii) of this subparagraph no request has been received, the Director or the head of the agency may enter an order declaring the contractor or

subcontractor ineligible for further contracts, subcontracts, or extensions or other modifications of existing contracts, until such contractor or subcontractor shall have satisfied the Director that he has established and will carry out personnel and employment policies and practices in compliance with the provisions of the equal opportunity clause.

(v) *Decision following hearing*. When the hearing is conducted by an agency, the hearing officer shall make recommendations to the head of the agency who shall make a decision. No decision by the head of the agency, or his representatives, shall be final without the prior approval of the Director. When the hearing is conducted by a hearing officer appointed by the Director, the hearing officer shall make recommendations to the Director, who shall make the final decision. Parties shall be furnished with copies of the hearing officer's recommendations, and shall be given an opportunity to submit their views.

§ 60-1.27 Sanctions and penalties.

The sanctions described in subsections (1), (5), and (6) of section 209(a) of the order may be exercised only by or with the approval of the Director. Referral of any matter arising under the order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Director.

§ 60-1.28 Show cause notices.

When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.

§ 60-1.29 Preaward notices.

(a) *Preaward compliance reviews*. Upon the request of the Director, agencies shall not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Director until a preaward compliance review has been conducted and the Director or designated agency head or his designee has approved a determination that the bidder, prospective prime contractor or proposed subcontractor will be able to comply with the provisions of the equal opportunity clause.

(b) *Other special preaward procedures*. Upon the request of the Director, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Director until the agency has complied with the directions contained in the request.

§ 60-1.30 Contract ineligibility list.

The Director shall distribute periodically a list to all executive departments and agencies giving the names of prime contractors and subcontractors who have been declared ineligible under the regulations in this part and the order.

§ 60-1.31 Reinstatement of ineligible prime contractors and subcontractors.

Any prime contractor or subcontractor declared ineligible for further contracts or subcontracts under the order may request reinstatement in a letter directed to the Director. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause.

§ 60-1.32 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by the agency or the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

Subpart C—Ancillary Matters

§ 60-1.40 Affirmative action compliance programs.

(a) *Requirements of programs.* Each agency or applicant shall require each prime contractor who has 50 or more employees and a contract of \$50,000 or more and each prime contractor and subcontractor who has 50 or more employees and a subcontract of \$50,000 or more to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in his affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties if any), rates of pay, and where more than one rate of pay applies (because of length of time in the job or other factors) the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(b) *Utilization evaluation.* The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories.

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.

(3) An analysis of upgrading, transfer and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) *Maintenance of programs.* Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of the agency or Director upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

§ 60-1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, creed, color, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 60-1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Director or by the agency with the approval of the Director, the notices which prime contractors and subcontractors are required to post by paragraphs (1) and (3) of the equal opportunity clause will contain the following language and will be provided by the contracting or administering agencies:

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW—DISCRIMINATION IS PROHIBITED BY THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER NO. 11246

Title VII of the Civil Rights Act of 1964—Administered by:

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1800 G Street NW.
Washington, D.C. 20506

Executive Order No. 11246—Administered by:

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

Prohibits discrimination because of Race, Color, Creed, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment. By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

U.S. Department of Labor
Washington, D.C. 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment and representatives of each labor union or other organization representing his employees with which he has a collective bargaining agreement or other contract or understanding.

§ 60-1.43 Access to records of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the order, and all rules and regulations promulgated pursuant thereto, by the agency, or the Director for purposes of investigation to ascertain compliance with the equal opportunity clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the order, the administration of the Civil

RULES AND REGULATIONS

Rights Act of 1964, and in furtherance of the purposes of the order and that Act.

§ 60-1.44 Rulings and interpretations.

Rulings under or interpretations of the order or the regulations contained in this part shall be made by the Secretary or his designee.

§ 60-1.45 Existing contracts and subcontracts.

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of agencies regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be proc-

essed as if they were complaints regarding violations of this order.

§ 60-1.46 Delegation of authority by the Director.

The Director is authorized to redelegate the authority given to him by the regulations in this part. The authority redelegated by the Director pursuant to the regulations in this part shall be exercised under his general direction and control.

§ 60-1.47 Effective date.

The regulations contained in this part shall become effective July 1, 1968, for all contracts, the solicitations, invitations for bids, or requests for proposals which were sent by the Government or an applicant on or after said effective date, and for all negotiated contracts which have not been executed as of said effective date. Notwithstanding the foregoing, the regulations in this part shall become effective as to all contracts executed on and

after the 120th day following said effective date. Subject to any prior approval of the Secretary, any agency may defer the effective date of the regulations in this part, for such period of time as the Secretary finds to be reasonably necessary. Contracts executed prior to the effective date of the regulations in this part shall be governed by the regulations promulgated by the former President's Committee on Equal Employment Opportunity which appear at 28 F.R. 9812, September 2, 1963, and at 28 F.R. 11305, October 23, 1963, the temporary regulations which appear at 30 F.R. 13441, October 22, 1965, and the orders at 31 F.R. 6881, May 10, 1966, and 32 F.R. 7439, May 19, 1967.

Signed at Washington, D.C., this 21st day of May 1968.

WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 68-6298; Filed, May 27, 1968;
8:45 a.m.]

FEDERAL REGISTER

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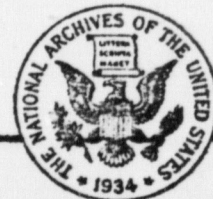
• Washington, D.C.

Pages 2567-2635

Agencies in this issue—

The President
Agricultural Research Service
Atomic Energy Commission
Civil Aeronautics Board
Commodity Credit Corporation
Consumer and Marketing Service
Federal Aviation Administration
Federal Communications Commission
Federal Contract Compliance Office
Federal Power Commission
Federal Reserve System
Fish and Wildlife Service
Food and Drug Administration
Government National Mortgage
Association
Indian Affairs Bureau
Interior Department
Internal Revenue Service
Interstate Commerce Commission
Land Management Bureau
National Park Service
Public Buildings Service
Securities and Exchange Commission
Small Business Administration
Social Security Administration

Detailed list of Contents appears inside.



of each firm recommended, for the purpose of obtaining such additional information as the evaluation committee may deem necessary and desirable. The evaluation committee shall also review any GSA record of performance on projects previously performed for GSA by the firms recommended for final consideration. Concurrently, the evaluation committee shall, in the case of projects funded from appropriations to other Federal agencies, invite the agency concerned to submit additional information or comment as such agency may deem appropriate. The evaluation committee shall recommend additional equally qualified firms, if appropriate, and shall prepare and append a report, if necessary, to accompany the list of firms recommended. The list and report, if any, shall be forwarded through established channels to the authority designated to make final selection.

(h) The Administrator, with the advice of the Commissioner, Public Buildings Service, will make the final selection on all projects.

(Sec. 205(c), 62 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the *FEDERAL REGISTER*.

Dated: January 27, 1970.

ROBERT B. FOSTER, Jr.,
Acting Commissioner,
Public Buildings Service.

[F.B. Doc. 70-1422; Filed, Feb. 4, 1970;
8:46 a.m.]

Chapter 9—Atomic Energy Commission

PART 9-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 9-5.53—Procurement of General Purpose Automatic Data Processing Equipment and Related Items

New subpart 9-5.53 implements and supplements FPMR 101-32.4.

The following subpart is added:

Subpart 9-5.53—Procurement of General Purpose Automatic Data Processing Equipment and Related Items

Sec.

9-5.5300 Scope of subpart.

9-5.5301 Definition of ADPE.

9-5.5302 Authority to procure general purpose ADPE.

9-5.5303 Submission of procurement documents and Agency Procurement Requests (APR) to GSA.

AUTHORITY: The provisions of this Subpart 9-5.53 issued under sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

§ 9-5.5300 Scope of subpart.

(a) This subpart implements and supplements FPMR 101-32.4, which deals with the procurement of general purpose automatic data processing equip-

ment (ADPE) and related items by Federal agencies.

(b) The procurement of ADPE, software, maintenance services, and supplies by AEC contractors is not subject to the requirements of FPMR 101-32.4.

(c) The policies and procedures covering the procurement of electronic data processing tape are contained in FPMR 101-26.508 and AECPR 9-5.5206-26.

§ 9-5.5301 Definition of ADPE.

(a) The term "general purpose" which appears in the definition of ADPE in FPMR 101-32.402-1, applies to the nature of the equipment and not to the manner in which the equipment is to be used. The fact that an item of general purpose ADPE will be used in a unique or highly specialized application does not exempt such equipment from the requirements of this subpart. Furthermore, when general purpose components are configured into a computer system that will be used in a unique manner to meet a special need, the entire system is considered general purpose and is subject to the requirements of this subpart.

(b) "First-of-a-kind" ADPE which has not been announced by the manufacturer as being commercially available is not considered to be general purpose ADPE within the meaning of the definition in FPMR 101-32.403.1, since it is not mass-produced, commercially available equipment.

(c) ADPE components that are specifically designed or built to the special requirements of the AEC are not general purpose ADPE.

§ 9-5.5302 Authority to procure general purpose ADPE.

In accordance with the provisions of FPMR 101-32.403-1(c), GSA issued Bulletin FPMR E-72, dated May 29, 1969, which provided Federal agencies with a blanket delegation of authority to procure ADPE without prior GSA approval provided the procurement does not exceed \$50,000. The delegation of authority does not include attendant maintenance costs if purchase is the method of acquisition. If the equipment is to be leased, the annual basic rental costs will be used to determine the dollar limitation set forth. The delegation of authority applies only to ADP equipment and does not apply to the separate procurement of software, maintenance services, and supplies.

§ 9-5.5303 Submission of procurement documents and Agency Procurement Requests (APR) to GSA.

(a) FPMR 101-32.403 requires that in instances where agencies have been delegated authority under the provisions of FPMR 101-32.403 to procure ADPE, such agencies must send copies of the solicitation documents (RFP, IFB, or RFQ) and any subsequent amendments thereto, to GSA, as soon as available, but in no event later than the date issued to industry. In addition, FPMR 101-32.403 also requires that copies of resulting purchase/delivery orders or contracts shall be forwarded to GSA upon issuance.

(1) All solicitation documents which are required to be submitted to GSA should be sent, in quadruplicate, to the Division of Contracts, Headquarters. The Division of Contracts will transmit two copies to GSA.

(2) All contract documents which are required to be sent to GSA should be sent, in triplicate, to the Division of Contracts, Headquarters. The Division of Contracts will transmit one copy to GSA.

(b) FPMR 101-32.404 requires that agencies submit Agency Procurement Requests (APR) to GSA immediately upon determination that a procurement action is not covered by the delegation of procurement authority provided in FPMR 101-32.403, or where the conditions of the contemplated procurement change at any time during the procurement cycle in such a manner as to remove it from the delegation of authority provided in FPMR 101-32.403.

(1) All Agency Procurement Requests which are required to be submitted to GSA should be sent, in quadruplicate, to the Division of Contracts, Headquarters. The Division of Contracts will transmit two copies to GSA.

Effective date. These amendments are effective upon publication in the *FEDERAL REGISTER*.

Dated at Germantown, Md., this 29th day of January 1970.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director,
Division of Contracts.

[F.B. Doc. 70-1417; Filed, Feb. 4, 1970;
8:45 a.m.]

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

PART 60-2—AFFIRMATIVE ACTION PROGRAMS

Pursuant to Executive Order 11246, sections 201, 205, 211 (39 F.R. 12319), and 41 CFR 60-1.6, 60-1.18, 60-1.29, 60-1.40, Title 41 of the Code of Federal Regulations is hereby amended by adding a new Part 60-2 to read as set forth below.

Subpart A—General

Sec.

60-2.1 Title, purpose and scope.

60-2.2 Agency action.

Subpart B—Required Contents of Affirmative Action Programs

60-2.10 Purpose of affirmative action program.

60-2.11 Required utilization analysis and goals.

60-2.12 Additional required ingredients of affirmative action programs.

60-2.13 Compliance status.

Subpart C—Suggested Methods of Implementing the Requirements of Subpart B

60-2.20 Development or reaffirmation of the equal employment opportunity policy.

- Sec.
60-2.21 Dissemination of the policy.
60-2.22 Responsibility for implementation.
60-2.23 Identification of problem areas by organization unit and job categories.
60-2.24 Establishment of goals and timetables.
60-2.25 Development and execution of programs.
60-2.26 Internal audit and reporting systems.
60-2.27 Support of action programs.

Subpart B—Miscellaneous
60-2.30 Use of goals.
60-2.31 Supersession.

AUTHORITY: The provisions of this Part 60-2 issued pursuant to sec. 201, E.O. 11246 (30 F.R. 12319).

Subpart A—General

§ 60-2.1 Title, purpose and scope.

This part shall also be known as "Order No. 4," and shall cover nonconstruction contractors. Section 60-1.40 of this chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of \$50,000 or more develop a written affirmative action compliance program for each of its establishments. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then sets forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity.

§ 60-2.2 Agency action.

(a) Any contractor required by § 60-1.40 to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246 (30 F.R. 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60-2.10 through 60-2.31, the contractor is unable to comply with the equal employment opportunity clause.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments, the contracting officer shall declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations. *Provided*, That dur-

ing the preaward conferences provided for in § 60-1.6(d)(3), every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60-2.10 through 60-2.31 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations and orders. *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60-1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or that his program is not acceptable the contracting officer shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60-1.26(b), giving the contractor 10 days to request a hearing. If a request for hearing has not been received within 10 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation and persuasion to resolve the deficiencies which led to the determination of noncompliance or nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60-1.26(b).

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

Subpart B—Required Contents of Affirmative Action Programs

§ 60-2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and, further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities at all levels and in all segments of his work force where deficiencies exist.

§ 60-2.11 Required utilization analysis and goals.

Affirmative action programs must contain the following information:

(a) An analysis of all major job categories at the facility, with explanations if minorities are currently being underutilized in any one or more job categories (job "category" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities in a particular job category than would reasonably be expected by their availability. In determining whether minorities are being underutilized in any job category, the contractor will consider at least all of the following factors:

- (1) The minority population of the labor area surrounding the facility;
- (2) The size of the minority unemployment force in the labor area surrounding the facility;
- (3) The percentage of minority work force as compared with the total work force in the immediate labor area;
- (4) The general availability of minorities having requisite skills in the immediate labor area;
- (5) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;
- (6) The availability of promotable minority employees within the contractor's organization;
- (7) The anticipated expansion, contraction and turnover of and in the work force;
- (8) The existence of training institutions capable of training minorities in the requisite skills; and
- (9) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(b) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

RULES AND REGULATIONS

Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor. Where the contractor has not established a goal his written affirmative action program must specifically analyze each of the factors listed in "a" above and must detail his reason for a lack of a goal. In establishments with over 1,000 employees, or where otherwise appropriate, goals and timetables may be presented by organizational unit. The goals and timetables should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing his goals and timetables the contractor should consider the results which could be reasonably expected from his good faith efforts to make his overall affirmative action program work. If he does not meet his goals and timetables, the contractor's "good faith efforts" shall be judged by whether he is following his program and attempting to make it work toward the attainment of his goals.

(c) Support data for the above analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data should include progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority status.

(d) Based upon the Government's experience with compliance reviews under the Executive Order programs and the contractor reporting system, over the past eight (8) years, minority groups are most likely to be underutilized in the following six (6) categories as defined by the Employer's Information Report, EEO-1: officials and managers, professionals, technicians, sales workers, office and clerical, and craftsmen (skilled). Therefore, the contractor shall direct special attention to these categories in his analysis and goal setting.

§ 60-2.12 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job categories.

(e) Establishment of goals and objectives by organizational units and job category, including timetables for completion.

(f) Development and execution of action oriented programs designed to elimi-

nate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Active support of local and national community action programs.

§ 60-2.13 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to his program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of suggestions and examples of procedures that contractors and federal agencies may use as guidelines for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Suggested Method of Implementing the Requirements of Subpart B

§ 60-2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting or monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, and promote all job classifications without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification.

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all other personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification.

(b) The contractor should periodically conduct analyses of all personnel actions to insure equal opportunity.

§ 60-2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report, and other media.

(3) Conduct special meetings with executive, management, and supervisory

personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions of minority employees, etc., in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, both minority and nonminority employees should be pictured.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) When employees are pictured in consumer or help wanted advertising, both minorities and nonminorities should be shown.

(5) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60-2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his sole responsibility. He should be given the necessary top management support and staffing to execute his assignment. His responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's program.

(ii) Indicate need for remedial action.
(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies, minority organizations, and community action groups.

(6) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations and community action groups.

(3) Periodic audit of hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure minorities are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

(ii) All facilities including company housing, are fact desegregated, both in policy and in use.

(iii) Minority employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervision should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

§ 60-2.23 Identification of problem areas by organizational unit and job categories.

(a) An in-depth analysis of the following should be made, paying particular attention to apprentices and those categories listed in § 60-2.11(d):

(1) Racial composition of the work force.

(2) Racial composition of applicant flow.

(3) The total selection process including position descriptions, man specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities in specific work classifications.

(2) Lateral and/or vertical movement of minority employees occurring at a lesser rate (compared to work force mix) than that of nonminority employees.

(3) The selection process eliminates a higher percentage of minorities than nonminorities.

(4) Application and related preemployment forms not in compliance with local, State, or Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Man specifications not validated in relation to position requirements and job performance.

(7) Test forms not validated by location, work performance and inclusion of minorities in sample.

(8) Referral ratio of minorities to the hiring supervisor or manager indicates an abnormal percentage are being rejected as compared to nonminority applicants.

(9) Minorities are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a racial disparity exists between length of service and types of jobs held.

(12) Nonsupport of company policy by managers, supervisors, or employees.

(13) Minorities underutilized or underrepresented in apprenticeship programs or other training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits employment of qualified minorities for professional and management positions.

(16) Lack of suitable transportation (public or private) to the workplace inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60-2.24 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider, at least the factors listed in § 60-2.11(a).

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

§ 60-2.25 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate man specifications by division, department, location, or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities, such requirements should be professionally validated to job performance.

(c) Approved position descriptions and man specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor should validate all selection criteria (Note Department of Labor Order of Sept. 9, 1968) (33 F.R. 44392, Sept. 24, 1968) covering the validation of Employment Tests and Other Selection Techniques by Contractors and Subcontractors Subject to the Provisions of Executive Order 11246.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups. Such techniques include but are not restricted to, unscored interviews, unscored application forms, arrest records, and credit checks.

RULES AND REGULATIONS

Where there exists data suggesting that such unfair discrimination or exclusion of minorities exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer qualified minority applicants. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority employees, clear and concise explanations of current and future job openings, position descriptions, man specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, follow-up with sources, and feedback on disposition of applicants.

(3) Minority employees, using procedures similar to (2) above, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities on the Personnel Relations staff.

(5) Minority employees should be made available for participation in Career Day, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with minority enrollments.

(8) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with the predominantly Negro colleges.

(ii) "After school" and/or work-study jobs for minority youths.

(iii) Summer jobs for underprivileged youth.

(iv) Summer work-study programs for faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed.

(9) When recruiting brochures pictorially present work situations, the minority members of the work force should be included.

(10) Help wanted advertising should be expanded to include the minority news media on a regular basis.

(f) The contractor should insure that minority employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) An inventory of current minority employees to determine academic, skill and experience level of individual employees.

(2) Initiating necessary remedial, job training and work-study programs.

(3) Developing and implementing formal employee evaluation programs.

(4) Being certain "man specifications" have been validated on job performance related criteria. (Minorities should not be required to possess higher qualifications than those of the lowest qualified incumbent.)

(5) When apparently qualified minorities are passed over for upgrading, require supervisory personnel to submit written justification.

(6) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system, and similar programs.

(7) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage minority employees to participate.

§ 60-2.26 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and time tables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60-2.27 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority employees to actively participate in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges with significant minority enrollment in programs designed to enable graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority employees in local and minority news media.

(f) The contractor should support programs developed by the National Alliance of Businessmen, the Urban Coalition and similar organizations.

Subpart D—Miscellaneous

§ 60-2.30 Use of goals.

The purpose of a contractor's establishment and use of goal is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex or national origin.

§ 60-2.31 Supersedure.

This part is an amplification of and supersedes a previous "Order No. 4" from this Office dated November 20, 1969.

Effective date. This part is effective January 30, 1970.

Signed at Washington, D.C. this 30th day of January 1970.

GEORGE P. SHULTZ,
Secretary of Labor.

JOHN L. WILKS,
Director, Office of
Federal Contract Compliance.

[P.R. Doc. 70-1411; Filed, Feb. 4, 1970;
8:50 a.m.]

Title 47—TELECOMMUNICATION

[PCC 70-108]

Chapter I—Federal Communications Commission

PART 73—RADIO BROADCAST SERVICES

Maximum Power Versus Antenna Height To Improve the Accuracy of the Delineations Thereon

1. Figure 1, Maximum Power Versus Antenna Height, § 73.333 of the Commission's rules and regulations, is used to determine the maximum allowable power of an FM broadcast station when the antenna height is greater than 300, 500, and 2,000 feet for Class A, B, and C stations, respectively. The delineations depicted on Figure 3 are based on the maximum distance from the transmitter of the 1 millivolt per meter signal intensity contour for the various classes of stations when operating with the maximum permissible combination of power and antenna height specified in § 73.211 (b) of the rules.

2. During the processing of applications for FM broadcast stations, it has come to the Commission's attention that equivalent power determinations for Class A stations obtained from Figure 3 when involving antenna heights above 1,150 feet result in a maximum power limitation less than would be obtained by use of the F(50, 50) Propagation Chart, Figure 1, § 73.333 of the rules.

¹ As used here, "antenna height" means antenna height above average terrain and "power" means effective radiated power.

Inter-Office Memorandum

DATE : 28 Apr 71

SUBJECT: Questions and Answers on Order No. 4

FROM : DCBN-VD

TO : CCO Professional Staff

1. Attached you will find questions and answers on Order No. 4 as submitted by John L. Wilks, Director of OECC, through DCAS-V.

2. Mr. Wilks included in his memo the following statement:

"THIS DOCUMENT WAS SPECIFICALLY DEVELOPED AS A GUIDE TO COMPLIANCE AGENCY PERSONNEL AND IS NOT INTENDED FOR WIDER DISTRIBUTION."

You will be guided by this statement.

1 att.

Benjamin A. Collier
BENJAMIN A. COLLIER
Deputy Chief, Contracts
Compliance Office

HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22304

IN REPLY
REFER TO DMS-7

20 April 1971

SUBJECT: Questions and Answers on Order Number 4

TO: Region Commander
ATTN: Chief, Office of Contracts Compliance

Forwarded for information and guidance is the enclosed series of questions and answers on Order No. 4 which has been prepared by the Office of Federal Contract Compliance for use by compliance agency personnel.

FOR THE DIRECTOR:

Encl

10.5/11
KENNETH W. [illegible]
Chief, Office of Contracts Compliance
Contract Administration Services

BACKGROUND

In July 1968, with publication of new Labor Department Rules and Regulations with respect to Executive Order 11246, Government contractors were required to develop goals and timetables as a part of their affirmative action plans whenever the contractor's analysis indicated deficiencies in the employment of minority group persons. Such plans were required to be maintained at each establishment operated by the contractor (41 CFR 60-1.40).

After over a year of experience under these regulations, OFCC determined through reviews of agencies programs that such plans and goals and timetables were not maintained as required. As a consequence, on September 15, 1969, John Wilks, Director of OFCC, issued a memorandum to the Heads of all Agencies citing the requirements under the Regulations and furnishing additional guidelines for the establishment of numerical goals and timetables whenever underutilization of minority group members was determined. This was later issued as Order No. 4 on January 30, 1970. That Order included greater detail as to criteria the contractor should use in determining underutilization and added enforcement procedures. Such procedures included a requirement to issue a Show Cause Notice in the absence of acceptable affirmative action plans and thereafter to issue a notice of intent to debar within 30 days if the matter had not been resolved.

The Order was printed in the Federal Register on February 5, 1970, and is now in effect throughout the contract compliance program.

13.

Question:

Can a contracting officer find a contractor responsible if he learns that one or more of the contractor's establishments or divisions has failed to develop acceptable affirmative action programs?

Answer:

No, even though the particular establishment or division where the contract is to be performed has an acceptable affirmative action program, the fact that one or more of the contractor's other establishments has failed to develop acceptable programs will render the contractor nonresponsible. See 41 CFR 60-2.2(b).

14.

Question:

Does Order No. 4 require that the contractor eliminate the continuing effects of past discrimination in his establishments?

Answer:

Yes, a contractor's analysis must determine if there are continuing effects of past discrimination. If such continuing effects are identified, they must be eliminated as a condition of compliance. See 41 CFR 60-2.23

15.

Question:

What is the difference between contractor "non-responsibility" and contractor "noncompliance"?

Answer:

Nonresponsibility is a broad procurement concept in which the contracting agent determines the low bidder's ability to perform the contract. As it relates to the Executive Order, nonresponsibility is a finding by an agency that the contractor is not able to meet the requirements of the equal employment opportunities clause of the contract.

Noncompliance results from a legal finding by an administrative panel or a court of law supporting the finding of the compliance or contracting agencies.

16.

Question:

Can an agency ever make a determination of contractor responsibility or nonresponsibility solely by examining a written affirmative action program?

Answer:

Where a contractor does not have an Affirmative Action Program or where an affirmative action program is clearly inadequate on its face, a contractor may be found nonresponsible. Otherwise, the compliance

Inter-Office Memorandum

DATE : 14 Oct 71

SUBJECT: Status of AAP's at Contractor Facilities Not Reviewed On-Site

FROM : DCRN-V

TO : CCO Professional Staff

1. In order for a contractor to be considered in compliance with Executive Order 11246, as amended, and Order 4, it is required that each facility of that contractor have an acceptable affirmative action program. The determination as to whether facilities other than the location under on-site review have acceptable AAP's can, therefore, become a critical factor in deciding the compliance status of the facility actually subjected to a review.

2. Compliance status or awardability of a facility being reviewed on-site cannot be affected by any information about other unreviewed facilities received by the CRS from unofficial sources, such as the contractor. For example, information furnished by the contractor that branch locations do not have acceptable AAP's shall be included in the evaluation report so that such branch locations of the contractor, if located in this region, may be assigned for compliance reviews by the CCO Chief, or may be recommended for assignment by the CCO Chiefs in other regions, if the branch facilities of the contractor are located elsewhere. The compliance status or awardability of a facility under on-site review (which facility itself has an acceptable AAP) can only be changed by an on-site review of a contractor's other locations and a decision, including the issuance of a show cause letter, that specific other locations are in non-compliance or are non-awardable because of the lack of acceptable AAP's.

3. The foregoing requirements are entirely consistent with the answer to question 13 of a series of questions and answers issued by OFCC and forwarded to the regions by DCAS-V on 20 April 1971. The question and answer are quoted below:

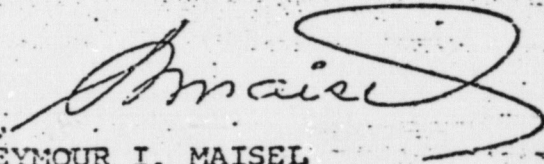
Q. Can a contracting officer find a contractor responsible if he learns that one or more of the contractor's establishments or divisions has failed to develop acceptable affirmative action programs?

DORN-7

SUBJECT: Status of AAP's at Contractor Facilities Not
Reviewed On-Site

- A. No, even though the particular establishment or division where the contract is to be performed has an acceptable affirmative action program, the fact that one or more of the contractor's other establishments has failed to develop acceptable programs will render the contractor nonresponsible. See 41 CFR 60-2.2(b).

4. The contracting officer in question "learns" that one or more of the contractor's establishments or divisions have failed to develop acceptable AAP's only through the official compliance review procedures described above. No action can be taken on the basis of unofficial information, regardless of the apparent reliability of the source, unless such information has been authenticated by means of an on-site compliance review.


SEYMOUR I. MAISEL
Chief, Contracts Compliance
Office

DATE : 18 October 1971

SUBJECT: Request for agency wide reaffirmation or further delineation of the orders, rules, regulations, circulars, letters etc., concerning the discharge of compliance responsibilities for contracts compliance trainees, investigators and officers, in their determination of the compliance status to be recommended by them in turn to contracting officers for contractors and contractor-bidders who have not developed "a written affirmative action compliance program for each of its establishments," 41 CFR 60-1.40(a).

FROM : Le Roy Gillead, Contractor Relations Specialist
Contracts Compliance Office, DCASR-NY

Le Roy Gillead

THRU : Brigadier General Louis J. Shelter, Commander, DCASR-NY

Major General Joseph J. Cody, Jr.
Deputy Director, Contract Administration Services

Certified true xeroxed.

copy of original

resigned 12 June 1972

TO : Lieutenant General Wallace H. Robinson, Jr.
Director, Defense Supply Agency

Le Roy Gillead

1. Without a view towards this inter-office memorandum, discussions were had on compliance responsibilities in determining the compliance status to be recommended in turn by compliance office staff for contractors/contractor-bidders who have not developed "a written affirmative action compliance program for each of its establishments," 41CFR 60-1.40(a). Discussions were during April, May and June 1971, with compliance office staff at all levels. The different views revealed a lack of uniform application for 41-CFR-60-1.40(a), 60-2.1, 60-2.2(a) and (b), in regard to discharging compliance responsibilities.
2. Subsequently, July 1971, the Chief of this contracts compliance office was orally informed that the writer was uncertain as to what to do for a resolution of the apparent inconsistent application of the cited regulations.
3. Recent events from July through October 1971, concerning the compliance status to be recommended for multi-establishment contractor/contractor-bidders who have not developed "a written affirmative action compliance program for each of its establishments," suggests regional differences between compliance office staff.

OFFICE OF FEDERAL CONTRACT COMPLIANCE

November 10, 1971

MEMORANDUM: 4200

TO : Stuart Broad, Director, Equal Opportunity (Civilian)

FROM : John L. Wilks, Director /s/ John L. Wilks

SUBJECT: DORN-V Memorandum - Status of AAP's at Contractor Facilities
Not Reviewed On-Site

It has come to the attention of the OFCC that DORN-V issued the subject memorandum dated October 14, 1971.

This memorandum is inconsistent with the spirit and intent of Executive Order No. 11,246 and 41 CFR 60-2. (Order No. 4)

Whenever there is reasonable evidence that a contractor has failed to maintain AAP's at covered establishments in accordance with Order No. 4, such a contractor shall not be found in compliance until it is positively determined that a plan is on file at the facility or facilities in question. When a contractor at one establishment indicates that an AAP is unacceptable or not on file at another of the same contractor's facilities regardless to location, this constitutes sufficient evidence to necessitate further examination to determine the compliance status of the contractor in question. In these type cases, immediate steps shall be taken to determine whether the appropriate AAP's are on file so as to avoid any unnecessary delay in determining compliance by the contractor.

You are hereby requested to order the subject memorandum rescinded immediately and to issue a clarification statement to all regions that is consistent with the position set forth herein with regard to compliance with Title 41, Sections 60-1.40 and 60-2.2(a) and (b) of the Code of Federal Regulations.

Please provide this office with a copy of all communications that are issued in regard to this matter.

TRUE FACSIMILE

DN10 RT

In Reply Refer To: 4200

MEMORANDUM

TO : Stuart Broad, Director
Equal Opportunity (Civilian)

FROM : John L. Wilks
Director /s/ John L. Wilks

SUBJECT: DCRN-V Memorandum - Status of AAP's at Contractor
Facilities Not Reviewed On-Site

It has come to the attention of the GECC that DCRN-V issued the
subject memorandum dated October 14, 1971.

This memorandum is inconsistent with the spirit and intent of
Executive Order No. 11,246 and 41 CFR 60-2.

Whenever there is reasonable evidence that a contractor has failed to
maintain AAP's at covered establishments in accordance with Order
No. 4, such a contractor shall not be found in compliance until it is
positively determined that a plan is on file at the facility or facilities
in question. When a contractor at one establishment indicates that an
AAP is unacceptable or not on file at another of the same contractor's
facilities regardless to location, this constitutes sufficient evidence
to necessitate further examination to determine the compliance status
of the contractor in question. In these type cases, immediate steps
shall be taken to determine whether the appropriate AAP's are on file
so as to avoid any unnecessary delay in determining compliance by the
contractor.

You are hereby requested to order the subject memorandum rescinded
immediately and to issue a clarification statement to all regions that is

-2-

consistent with the position set forth herein with regard to compliance with Title 41, Sections 60-1.40 and 60-2.2(a) and (b) of the Code of Federal Regulations.

Please provide this office with a copy of all communications that are issued in regard to this matter.



DEFENSE SUPPLY AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22314

11 OCT 1971

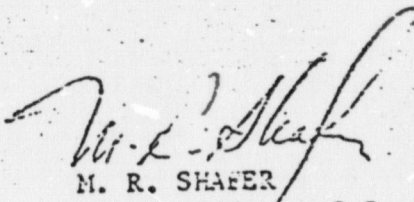
IN REPLY
REFER TO DCAS-V

SUBJECT: Status of AAP's at Contractor Facilities Not Reviewed Onsite

TO: Commander
DCASR, New York
ATTN: DCRN-V

1. Reference: Memorandum, DCRN-V to CCO Professional Staff, 14 October 1971, subject as above.
2. This Headquarters has reviewed the referenced memorandum as requested in your letter of 26 October 1971 and is in substantial agreement with the guidance furnished on this subject. The basis for agreement is that, as a practical matter, there are many instances, particularly in the case of preaward reviews, in which the accomplishment of onsite reviews of all of a contractor's facilities would be difficult, if not impossible, to accomplish within a reasonable period of time. In addition, any attempt to schedule reviews in all instances in which the contracting officer has not ascertained that an acceptable AAP has been developed for every facility, could be expected to result in an over extension or wasteful expenditure of our limited compliance capability. This appears entirely consistent with 41CFR 60-2.2(b) which states that the contracting officer should respond only to validated information from official Government sources. It must continue to be emphasized, however, that a contractor subject to the requirements of 41CFR 60-2 does have an obligation to develop, for each of his facilities, an acceptable AAP. Thus, the procedure of scheduling reviews at other facilities within your Region and bringing appropriate information concerning other facilities of the contractor to the attention of the appropriate DCASR CCO Chief as outlined in paragraph 2 of your 14 October 1971 memorandum should be pursued diligently.

FOR THE DIRECTOR:


M. R. SHAFER

Chief, Office of Contracts Compliance
Contract Administration Services

EMPLOYEE PERFORMANCE APPRAISAL AND RATING		1. TYPE OF APPRAISAL	
		<input checked="" type="checkbox"/> OFFICIAL	<input type="checkbox"/> UNOFFICIAL
2. LAST NAME-FIRST NAME-MIDDLE INITIAL GILLEAD, Leroy F.		3. TITLE, GRADE AND JOB NUMBER DCRN-V 21 Contractor Relations Specialist, GS-13	
4. ACTIVITY DCASR-NY	5. ORGANIZATIONAL ELEMENT DCRN-V	6. PERIOD COVERED FROM 11/1/70 TO 10/31/71	
7. SUPERVISOR'S EVALUATION OF PERFORMANCE ON THE ABOVE JOB Mr. Gillead's performance during the rating year was acceptable under current standards. He demonstrated great dedication to the contracts compliance program and its objectives. A need for improvement exists in the area of willingness to accept direction from his superiors on the interpretation of contracts compliance regulations. Mr. Gillead tends to resist interpretations which are at variance with his own understanding of the meaning of higher level regulations, such as those			
8. PERFORMANCE RATING "X"	9. EMPLOYEE'S SIGNATURE <i>Signed under protest</i> <i>Leroy Gillead</i>		10. DATE OF DISCUSSION 22 Nov 71
X SATISFACTORY	11. SUPERVISOR'S SIGNATURE <i>Seymour D. Mann</i>		11A. REVIEWING OFFICIAL'S SIGNATURE <i>Peter J. ...</i>
OUTSTANDING (Justification attached)	12. APPROVAL OF OUTSTANDING RATING (Signature of approving official)		DATE
UNSATISFACTORY (Justification attached)	13. APPROVAL OF UNSATISFACTORY RATING (Signature of approving official)		DATE
14. WHAT IS BEING DONE TO IMPROVE PERFORMANCE, TO UTILIZE STRENGTHS, TO DEVELOP POTENTIAL ABILITY? A training session on the new regulation covering employment tests and selection procedures is planned during the coming year, and Mr. Gillead will be scheduled to attend in order to improve his skills in this area. *issued by the Office of Federal Contract Compliance, which is an agency of the Department of Labor. This problem requires attention by Mr. Gillead in order for him to continue to be effective in carrying out the DOD contracts compliance program. Cost consciousness has been considered in this appraisal.			
DISTRIBUTION OF COPIES: <input type="checkbox"/> EMPLOYEE'S COPY <input type="checkbox"/> PERSONNEL FOLDER COPY <input type="checkbox"/> SUPERVISOR'S COPY			

EMPLOYEE PERFORMANCE APPRAISAL AND RATING			1. TYPE OF APPRAISAL	
			<input checked="" type="checkbox"/> OFFICIAL	<input type="checkbox"/> UNOFFICIAL
2. LAST NAME - FIRST NAME - MIDDLE INITIAL GILLEAD, LeRoy		3. TITLE, GRADE AND JOB NUMBER Equal Employment Opportunity Specialist, GS-13, DCRNV21		
4. ACTIVITY DCASR NY	5. ORGANIZATIONAL ELEMENT DCRN V	6. PERIOD COVERED FROM 1 Nov 71 TO 31 Oct 72		
7. SUPERVISOR'S EVALUATION OF PERFORMANCE ON THE ABOVE JOB				
<p>Mr. Gillead has been making some innovative approaches to workforce analyses as required by contractors. In some instances, this has been helpful. There has been improvement in his understanding of DCRN-V procedures so that his recommendations are in line with those of DCRN-V and DCAS-V. Cost consciousness has been considered in this rating.</p>				
8. PERFORMANCE RATING <div style="border: 1px solid black; padding: 2px;"> X "X" </div>		9. EMPLOYEE'S SIGNATURE <i>Signed under protest</i> <i>LeRoy Gillead</i>		10. DATE OF DISCUSSION <i>17 Jan 73</i>
<div style="border: 1px solid black; padding: 2px;"> X SATISFACTORY </div>		11. SUPERVISOR'S SIGNATURE <i>Benjamin G. Giller</i>		11A. REVIEWING OFFICIAL'S SIGNATURE <i>[Signature]</i>
<div style="border: 1px solid black; padding: 2px;"> OUTSTANDING (Justification attached) </div>		12. APPROVAL OF OUTSTANDING RATING (Signature of approving official)		DATE
<div style="border: 1px solid black; padding: 2px;"> UNSATISFACTORY (Justification attached) </div>		13. APPROVAL OF UNSATISFACTORY RATING (Signature of approving official)		DATE
14. WHAT IS BEING DONE TO IMPROVE PERFORMANCE, TO UTILIZE STRENGTHS, TO DEVELOP POTENTIAL ABILITY?				
<p>A 3-day training session sponsored by DCAS-V was made available to Mr. Gillead which he attended on 3, 4, and 5 October. Mr. Gillead will be further counseled in analysis of the personnel policies and practices of contractors.</p> <p style="text-align: center;"><i>item 7</i></p> <p>In this evaluation, the reviewing official has failed to assure the accuracy and fairness of my performance consistent with fact substantiated on the record. That is, that I have <u>at any time</u> submitted ER/PER recommending contractors for non-compliance not subject to our ^{according to the supervisor} jurisdiction. Therefore, the signature above is under protest to item 7 and the informal grievance procedure has been initiated.</p> <p style="text-align: right;"><i>LeRoy Gillead</i> <i>23 Mar 72</i></p> <p>It should be noted no instances were given where innovative approaches to work force analysis was not helpful. <i>[Signature]</i></p>				
15. DISTRIBUTION OF COPIES:				
<input checked="" type="checkbox"/> EMPLOYEE'S COPY <input type="checkbox"/> PERSONNEL FOLDER COPY <input type="checkbox"/> SUPERVISOR'S COPY				

NOTIFICATION OF PERSONNEL ACTION
(EMPLOYEE - See General Information on Reverse)

(FOR AGENCY USE)

1. NAME (CAPS) LAST - FIRST - MIDDLE GILLPAD, LEROY F.		2. (FOR AGENCY USE) DCRNV	3. BIRTH DATE (Mo., Day, Year) 06-12-20	4. SOCIAL SECURITY NO. 084-14-7538
5. VETERAN PREFERENCE 2 <input type="checkbox"/> 1 - NO 3 - 10 PT DISAB. 5 - 10 PT. OTHER 2 - 5 PT. 4 - 10 PT COMP.		6. TENURE GROUP 1	7. SERVICE COMP. DATE 03-30-60	
9. FEGLI 4 <input type="checkbox"/> 1 - COVERED (Regular only - declined Optional) 2 - INELIGIBLE 3 - WAIVED 4 - COVERED (Reg. & Opt.)		10. RETIREMENT 1 <input type="checkbox"/> 1 - CS 3 - FS 5 - OTHER 2 - FICA 4 - NONE		11. (FOR CSC USE)
12. CODE NAT OF ACTION 317 Resignation		13. EFFECTIVE DATE (Mo., Day, Year) 09-29-73		14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
15. FROM: POSITION TITLE AND NUMBER Equal Opportunity Specialist (Employment) DCRNV-21		16. PAY PLAN AND OCCUPATION CODE GS-0160	17. (a) GRADE (b) STEP OR LEVEL OR RATE 13 04	18. SALARY pa \$21671
19. NAME AND LOCATION OF EMPLOYING OFFICE DSA, DCASR-New York, Office of Contracts Compliance, New York Operations Division				

20. TO: POSITION TITLE AND NUMBER	21. PAY PLAN AND OCCUPATION CODE	22. (a) GRADE (b) STEP OR LEVEL OR RATE	23. SALARY
24. NAME AND LOCATION OF EMPLOYING OFFICE			

25. DUTY STATION (City-county-State) New York, New York		26. LOCATION CODE 36-4170-061
27. APPROPRIATION 671.01VN 1800 D74	28. POSITION OCCUPIED 1 - COMPETITIVE SERVICE 2 - EXCEPTED SERVICE 1	29. APPORTIONED POSITION FROM: TO: STATE 1 - PROV. 1 2 - WA. VEC - 2

30. REMARKS:	A. SUBJECT TO COMPLETION OF 1 YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING	C. DURING PROBATION
	B. SERVICE COUNTING TOWARD CAREER (OR PERMANENT) TENURE FROM:	

SEPARATIONS: SHOW REASONS BELOW, AS REQUIRED. CHECK IF APPLICABLE:

Employee Reason: In accepting my position as Contractor Relations Specialist, GS-13, Jan. '69, I was committed, without reservation, to the Agency's contracts compliance mission. To implement the applicable Orders, Rules and Regulations in good faith was my commitment. For the greater portion of my service, I have been frustrated by the Region from properly discharging my contracts compliance responsibilities. The intent and spirit of the provisions of EO 11246, as amended, and the applicable Rules and Regulations promulgated by OFCC and DSA, have been consistently thwarted by this Region. This apparent and continuing hopeless situation dictates that I resign or, if applicable, retire.

Agency Reasons: This office is not deviating from the mission assigned. There is consistent support for our program by the Region Commander and his staff. Records indicate the success of our program and this only comes from the devotion and hard work of our staff. It has been ascertained that the reason for the current resignation is to enable Mr. Gillpad to enter another field of endeavor. Employee had filed a grievance alleging improper performance appraisal and improper promotion evaluation several weeks prior to resignation.

Fwd Add: 1236 Burke Avenue, Bronx, New York 10469 SF-8, SF-56 & SF-2810 issued.

31. DATE OF APPOINTMENT AFFIDAVIT (Accessions only)	34. SIGNATURE (Or other authentication) AND TITLE CIVILIAN PERSONNEL OFFICER OFFICE OF CIVILIAN PERSONNEL DSA, DCASR-NY 60 HUDSON ST. N. Y. N.Y. 10013
32. OFFICE MAINTAINING PERSONNEL FOLDER (If different from employing office) SAME AS ITEM 34	35. DATE 10-04-73
33. CODE EMPLOYING DEPARTMENT OR AGENCY DD-Q7 DEFENSE SUPPLY AGENCY	

5 PART

50. EMPLOYEE COPY



DEFENSE SUPPLY AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22314

IN REPLY
REFER TO

DSAH-KS

12 OCT 1973

Mr. LeRoy F. Gillead
1236 Burke Avenue
Bronx, New York 10469

Dear Mr. Gillead:

Reference your grievance in connection with which a group meeting was held 11 June 1973, and in connection with which Mr. Carl R. Calabrese, Grievance Examiner, subsequently made his report and recommendation to this Headquarters.

We are in receipt of information that you resigned your employment at Defense Contract Administration Services Region, New York, effective 29 September 1973. Since you are no longer an employee of this agency, the grievance is cancelled and no further action will be taken in the matter.

Sincerely,

G. F. BRENNAN
Staff Director
Civilian Personnel

94th Congress }
1st Session }

JOINT COMMITTEE PRINT

THE EQUAL EMPLOYMENT OPPORTUNITY
PROGRAM FOR FEDERAL
NONCONSTRUCTION CONTRACTORS
CAN BE IMPROVED

A REPORT

PREPARED FOR THE USE OF THE
SUBCOMMITTEE ON FISCAL POLICY
OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

BY THE
GENERAL ACCOUNTING OFFICE



MAY 5, 1975

Printed for the use of the Joint Economic Committee

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

51-703 O

LETTERS OF TRANSMITTAL

MAY 2, 1975.

JOINT ECONOMIC COMMITTEE

(Created pursuant to sec. 5(a) of Public Law 304, 79th Cong.)

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ROBERT TAFT, Jr., Ohio
PAUL J. FANNIN, Arizona

(II)

To Members of the Joint Economic Committee:

Transmitted herewith for the use of the Members of the Joint Economic Committee and other Members of Congress is a General Accounting Office report entitled "The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved." The GAO investigation into Federal efforts to end job discrimination among Federal contractors was begun on January 1974 at the request of the Subcommittee on Fiscal Policy.

The GAO report found several deficiencies in the contract compliance program, both in the Department of Labor's Office of Contract Compliance, and in the various compliance agencies. GAO also made several recommendations to the Secretary of Labor for improving the Department's efforts to bring an end to job discrimination on the basis of race, sex, creed, or national origin by Federal contractors.

I commend the Comptroller General on a thorough well-done report. It is the first detailed, comprehensive evaluation of the contract compliance program.

HUBERT H. HUMPHREY,
Chairman, Joint Economic Committee.

APRIL 29, 1975.

HON. HUBERT H. HUMPHREY,
Chairman, Joint Economic Committee,
Congress of the United States, Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is a GAO report entitled "The Equal Employment Opportunity Program for Federal Nonconstruction Contractors Can Be Improved." This report was prepared for the Subcommittee on Fiscal Policy at the request of former Congresswoman Martha W. Griffiths and Senator Jacob K. Javits. The investigation by the General Accounting Office was an outgrowth of hearings conducted by Mrs. Griffiths in 1973 on "Economic Problems of Women."

The GAO report highlights a number of serious deficiencies in the Federal Government's contract compliance program which is administered in a number of compliance agencies under the direction of the Department of Labor. GAO found that the Office of Contract Compliance is not adequately monitoring the compliance agencies nor is it providing these agencies with sufficient guidance. One result of these deficiencies is that agencies are approving affirmative action plans which do not meet Federal guidelines.

(III)

IV

As a result of its investigation, GAO made a number of recommendations to the Secretary of Labor for improving the contract compliance program.

This investigation by the GAO marks the first thorough examination of the contract compliance program, initiated more than 10 years ago by Executive Order 11246. The assistance of the Comptroller General and the GAO staff who worked on the report are gratefully acknowledged.

RICHARD BOLLING,
Chairman, Subcommittee on Fiscal Policy.



The Equal Employment
Opportunity Program For
Federal Nonconstruction
Contractors Can Be Improved

Department of Labor

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

MWD-75-63

APRIL 29, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167015

To the Honorable Richard Bolling
Chairman, Subcommittee on
Fiscal Policy
Joint Economic Committee
Congress of the United States
and the Honorable Jacob K. Javits
United States Senate

This report deals with the administration of the contract compliance program for nonconstruction contractors and contains support for testimony given at hearings before the Subcommittee on September 11, 1974. We made our review pursuant to your January 21, 1974, joint request.

Officials of the Departments of Labor and Defense and the General Services Administration have been given an opportunity to review and comment on the contents of this report, and their views were considered in the preparation of the report.

We believe this report would interest committees, Members of Congress, and agency officials. Therefore, as agreed, we plan to distribute copies of this report accordingly.

James A. Stacks
Comptroller General
of the United States

Contents

	<u>Page</u>
DIGEST	i
CHAPTER	
1 INTRODUCTION	1
Nonconstruction program	4
2 IMPROVEMENTS NEEDED IN ADMINISTRATION OF THE PROGRAM	7
Need for assessment of minorities' and women's employment gains	7
Need to increase monitoring of the compliance agencies	9
Need for improved and timely guidance to compliance agencies	13
Need for improved training of compliance agency personnel	16
Conclusions	18
Recommendations to the Secretary of Labor	19
3 PROGRAM IMPLEMENTATION AND COMPLIANCE AGENCIES	20
AAPs not meeting guidelines	20
Enforcement actions not taken	27
Contractor universe not identified	30
Contractor facilities reviewed	32
Preaward reviews not made or requested	35
Conclusions	37
Recommendations to the Secretary of Labor	37
4 PROBLEMS IN COORDINATION BETWEEN EEOC AND THE DEPARTMENT OF LABOR	38
Complaint data not considered	39
New memorandum of understanding	40
Conclusions	40
Recommendation to the Secretary of Labor	40

CHAPTER		Page
5	AGENCY COMMENTS AND UNRESOLVED ISSUES	42
	Department of Labor comments	42
	Department of Defense comments	52
	General Services Administration comments	53
6	SCOPE OF REVIEW	65

APPENDIX

I	Letter dated January 21, 1974, from the Chairman, Subcommittee on Fiscal Policy of the Joint Economic Committee, and Senator Jacob K. Javits	66
II	Funds and staff devoted to the Federal contract compliance program for nonconstruction contractors	68
III	Reviews conducted, show-cause notices issued, and enforcement actions taken during fiscal years 1972, 1973, and 1974 (to 3-31-74)	69
IV	Department of Labor comments dated February 11, 1975	70
V	Department of Defense comments dated February 6, 1975	80
VI	General Services Administration comments dated February 14, 1975	83

ABBREVIATIONS

AAP	affirmative action program
AEC	Atomic Energy Commission
AID	Agency for International Development
DOD	Department of Defense
EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
NASA	National Aeronautics and Space Administration
OFCC	Office of Federal Contract Compliance
USDA	Department of Agriculture
USPS	United States Postal Service
VA	Veterans Administration

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE RICHARD BOLLING
CHAIRMAN, SUBCOMMITTEE ON
FISCAL POLICY
JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES
AND THE HONORABLE JACOB K. JAVITS
UNITED STATES SENATE

D I G E S T

WHY THE REVIEW WAS MADE

GAO was asked to review the effectiveness of management of the Federal contract compliance program in the nonconstruction industry.

This program is intended to insure that Federal contractors provide equal employment opportunity. The Department of Labor (hereinafter referred to as the Department) has overall responsibility for the program. (See p. 1.)

Specifically, GAO was asked to evaluate:

- Department guidance to and control over the 13 other Federal agencies, called compliance agencies, designated by the Department to be responsible for compliance reviews of nonconstruction contractors.
- Compliance agencies' efforts in implementing Department guidelines for conducting compliance reviews and complaint investigations.
- Application of enforcement measures available to the compliance agencies.

THE EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM FOR
FEDERAL NONCONSTRUCTION
CONTRACTORS CAN BE IMPROVED
Department of Labor

- Coordination of compliance review and complaint investigation activities between the Department and the Equal Employment Opportunity Commission.

FINDINGS AND CONCLUSIONS

Executive Order 11246, issued in September 1965 and amended in October 1967, with certain exceptions, prohibits Federal contractors from discriminating on the basis of race, color, religion, sex, or national origin. The order requires that Federal contractors eliminate employment discrimination and take affirmative action to insure that equal employment opportunity is provided. (See p. 1.)

In fiscal year 1974 over \$50 billion in Federal contracts was awarded to nonconstruction contractors that employed about 25 million workers. (See p. 4.)

Department guidelines require each nonconstruction contractor that has 50 or more employees and a Federal contract of \$50,000 or more to prepare a written affirmative action program designed to achieve prompt and full utilization of minorities and women at all levels and in all segments of the contractor's work force where deficiencies exist. (See p. 4.)

When contractors fail to comply with the program's provisions, compliance agencies are required to initiate enforcement actions, such as contract cancellation or debarment from future Federal contracts. (See p. 27.)

The Department does not yet have a fully operational system for assessing progress of Federal nonconstruction contractors in increasing employment of minorities and women. (See p. 7.)

The Department needs to increase its monitoring of the nonconstruction compliance program--particularly in regional offices. Since 1972 the Department has completely evaluated the nonconstruction program of only 1 of the 13 compliance agencies. (See pp. 9 and 11.)

The Department of Defense (DOD) and the General Services Administration (GSA), which performed about 59 percent of all compliance reviews from July 1, 1971, through March 31, 1974, have most of their staff resources allocated to the nonconstruction contract compliance program.

In DOD regional offices in Chicago, Philadelphia, and San Francisco, 106 of the 110 professionals are assigned to nonconstruction contract compliance functions. About 33 of the 44 professionals in the Chicago; Washington, D.C.; and San Francisco GSA regional offices work in the nonconstruction program.

In contrast, the Department's regional staffs in Chicago, Philadelphia, and San Francisco consisted of seven professionals, and about only the equivalent of one professional's time was spent

on the nonconstruction program. (See pp. 9 and 10.)

The Department needs to provide additional guidance and training. Officials of several agencies cited various areas in which Department guidance and training was needed to enable more thorough compliance reviews. (See pp. 13 and 16.)

Several weaknesses in the compliance agencies' implementation of the nonconstruction program were:

- DOD and GSA were approving affirmative action programs that did not meet the Department's guidelines. (See p. 20.)
- Some compliance agencies were reluctant to initiate enforcement actions and their conciliations with contractors exceeded the Department's time limits. (See p. 27.)
- Twelve of the 13 compliance agencies had not identified all contractors for which the agency was responsible. (See p. 30.)
- Most compliance agencies were not reviewing an adequate proportion of the contractors for which they were responsible. (See p. 30.)
- Some compliance agencies were not always conducting the required preaward reviews, and, contrary to the Department's guidelines, some contracting officers were awarding contracts without requesting compliance agencies to conduct preaward reviews. (See p. 35.)

Coordination between the Department, the compliance agencies, and the

Commission was not adequate. Information was not being exchanged and some compliance activities at contractor facilities had been duplicated. Also some compliance agencies were performing reviews of contractor facilities without considering discrimination complaints on file with the Commission. (See p. 38.)

In September 1974 the Department and the Commission entered into a new memorandum of understanding providing for coordination and consultation. However, unless regional staffs of compliance agencies and the Commission adhere to provisions of the memorandum, little will be accomplished.

Coordination and communication at the regional level is necessary to perform complete compliance reviews and minimize duplication of effort. (See p. 40.)

RECOMMENDATIONS

The Secretary of Labor should:

- Accelerate implementation of a system to measure progress of nonconstruction contractors and to assess program shortcomings in increasing and advancing minorities and women in the work force. (See p. 19.)
- Place greater emphasis on monitoring the nonconstruction program. (See p. 19.)
- Provide adequate and timely guidance to compliance agencies--especially in areas where agencies have requested assistance to perform more complete compliance reviews. (See p. 19.)

--Establish training courses for compliance officers. As a supplement to on-the-job training, centralized training should be offered to compliance officers from all compliance agencies. (See p. 19.)

--Sample and review approved affirmative action programs to insure that compliance agencies are complying with Department guidelines and fully document results of these reviews. (See p. 37.)

--Require compliance agencies to take timely enforcement action with respect to contractors not complying with the Executive order. (See p. 37.)

--Assist compliance agencies to better identify contractors under each agency's responsibility. (See p. 37.)

--Perform periodic tests to determine whether compliance agencies make preaward reviews and whether contracting agencies request preaward clearances when appropriate. (See p. 37.)

--Coordinate with the Commission at headquarters and regional levels and make periodic tests to insure that (1) complaint data on file with the Commission is considered by compliance agencies during reviews and (2) information is exchanged to minimize duplication of effort. (See p. 40.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department said that, in general, this report identified problem areas in its Federal contract

compliance program for nonconstruction contractors. The Department said the report contained many useful recommendations, the majority of which had already been implemented or were being implemented. The Department also said, however, that the report contained numerous factual inaccuracies, conclusions inferred without benefit of complete factual premises, and a serious absence of recognition of numerous pertinent program initiatives undertaken by the Department to resolve many problems cited in the report.

GAO considered the Department's comments and made a number of changes in the report to give recognition to these comments.

However, the Department's comments give rise to a number of unresolved issues which are discussed beginning on page 42.

DOD said it was implementing certain corrective actions to improve its administration of the contract compliance program. (See p. 52.)

GSA's comments indicated that it had taken some actions to improve administration of the contract compliance program, but its comments also indicated that it disagreed with some of GAO's findings and conclusions. GAO has made a number of changes in the report to give recognition to GSA's comments. GSA comments giving rise to unresolved issues are discussed beginning on page 53.

CHAPTER 1

INTRODUCTION

The first Executive order to establish policy on preventing employment discrimination by Federal contractors was issued in 1941 and, like most of its successors, was administered by a committee in the Executive Office of the President. Executive Order 11246, issued on September 24, 1965, and amended on October 13, 1967, prohibits discrimination on the basis of race, color, religion, sex, or national origin. The order assigned responsibility for supervising and coordinating the Federal contract compliance program to the Secretary of Labor.

With certain exceptions, the order requires Federal contractors and subcontractors to eliminate employment discrimination and take affirmative action to provide equal employment opportunity at all company facilities, including those not working on a Federal contract. For example, if a Government agency enters into a contract in Washington, D.C., and the contractor has other facilities throughout the United States, each of the contractor's facilities is required to comply with the provisions of the Federal contract compliance program.

Contractors under the Department of Labor's responsibility also fall within the Equal Employment Opportunity Commission's (EEOC's) responsibility under title VII of the 1964 Civil Rights Act, which prohibits discrimination in hiring, upgrading, and other conditions of employment on the basis of race, color, religion, sex, or national origin. EEOC investigates charges of discrimination against employers, labor organizations, and public and private employment agencies. If EEOC finds reasonable cause to believe that a charge is true, it will seek a full remedy through conciliation. The Equal Employment Opportunity Act of 1972 gave EEOC the authority to initiate a civil action to achieve a remedy when conciliation fails.

The Federal contract compliance program is divided into separate programs covering construction and nonconstruction

contractors. In implementing the program in the construction industry, which is characterized by temporary employment, shifting sites of operations, and limited duration of contracts, the Department of Labor uses areawide plans to increase the use of minorities in the industry-associated crafts. The nonconstruction industry deals primarily with supply and service contractors and is characterized by more permanent employment, fixed sites of operation, and Federal contracts over an extended time.

In accordance with the request of the Subcommittee on Fiscal Policy of the Joint Economic Committee, this report deals with our evaluation of the Department's administration of the nonconstruction compliance program and its coordination with EEOC. (See app. I.)

At the time we began our review, the Department had designated 13 Federal agencies, referred to as compliance agencies, to be responsible for enforcing the Executive order and related guidelines for nonconstruction contractors. The Secretary of Labor has delegated some of his authority to the Director of the Office of Federal Contract Compliance (OFCC), within the Department's Employment Standards Administration.

OFCC's responsibilities include

- establishing policies, objectives, priorities, and goals for the program;
- providing leadership, coordination, and enforcement of the program;
- reviewing and evaluating the capability and performance of each compliance agency to insure maximum progress to achieve the objectives of the Executive order; and
- developing and recommending such regulations for issuance by the Secretary of Labor as are necessary for administering the Executive order.

The Department has issued guidelines, and compliance agencies are responsible for carrying out the contract

compliance program in accordance with them. These guidelines concern such matters as the requirements for preparing acceptable affirmative action programs (AAPs) and the procedures for imposing enforcement actions authorized by the Executive order.

On March 28, 1974, the Department requested that we determine whether the equal employment opportunity regulations for public contracts prescribed by a State Fair Employment Practices Commission were in violation of the basic principles of Federal procurement law. After most of the audit work requested by the Subcommittee had been done, the Comptroller General, in responding on July 2, 1974, to the Department's request, stated that these regulations were inconsistent with the basic principles of Federal procurement law.

The Comptroller General also advised the Department that OFCC's

"* * * Revised Order No. 4, also seems to be in violation of the basic principles of Federal procurement law enunciated in our decisions in 47 Comptroller General 666 (1967) and 48 Comptroller General 326 (1968), in that a contractor can be defaulted under these regulations for its failure to submit an 'acceptable' affirmative action plan despite the fact that these regulations do not seem to contain any definite minimum standards and criteria apprising the prospective bidders of the basis upon which their compliance with the EEO [equal employment opportunity] requirements will be judged."

Although we believe such standards are needed, we evaluated the implementation of the nonconstruction contract compliance program under existing Department guidelines. (See ch. 6.)

NONCONSTRUCTION PROGRAM

The 13 Department-appointed compliance agencies responsible for enforcing the Executive order and related Department guidelines were the

- Agency for International Development (AID);
- Atomic Energy Commission (AEC);
- Department of Agriculture (USDA);
- Department of Commerce;
- Department of Defense (DOD);
- Department of Health, Education, and Welfare (HEW);
- Department of the Interior;
- Department of the Treasury;
- Department of Transportation;
- General Services Administration (GSA);
- National Aeronautics and Space Administration (NASA);
- United States Postal Service (USPS); and
- Veterans Administration (VA).

In fiscal year 1974 over \$50 billion in Federal contracts was awarded to nonconstruction contractors which employed about 25 million workers. The Department generally assigns compliance agencies responsibility for contractors in specified industries, usually on the basis of standard industrial classification codes, irrespective of which Federal agency entered into the contract. For example, GSA has been assigned 24 industries, including utilities and communications, and DOD has been assigned 30. NASA, the principal exception to this method of assignment, was given responsibility only for contractors having NASA contracts and located on or near a NASA facility.

Effective August 1, 1974, the Department reduced the number of compliance agencies responsible for nonconstruction contractors from 13 to 11. The Department transferred AID's compliance responsibility to GSA, eliminated the NASA exception, and assigned NASA's prior responsibilities principally to AEC and DOD. Department guidelines require each nonconstruction contractor that has 50 or more employees and a Federal contract of \$50,000 or more to write an AAP for each of its facilities. AAPs are intended to

achieve prompt and full utilization of minorities and women at all levels and in all segments of the contractor's work force where deficiencies exist.

The compliance agencies are responsible for conducting compliance reviews of Federal contractors within the industries assigned to them. Compliance reviews (including pre-award reviews, initial compliance reviews, followup reviews, and complaint investigations) consist of investigations during which the compliance officer analyzes each aspect of the contractor's employment policies, systems, and practices to determine adherence to the nondiscrimination and affirmative action requirements. Department guidelines provide that, when the review discloses that the contractor has (1) not prepared a required AAP, (2) deviated substantially from its approved AAP, or (3) had a program which was unacceptable, compliance agencies are required to pursue various enforcement measures.

The 13 compliance agencies conducted about 45,400 non-construction compliance reviews during fiscal years 1972, 1973, and the first 3 quarters of 1974. DOD and GSA performed about 26,700 reviews, or about 59 percent of all reviews. (See app. III.)

Funding and staffing

About 13 and 20 percent of OFCC's operating funds during fiscal years 1973 and 1974, respectively, were directly allocated to the nonconstruction program. Following is a table showing the funding breakdown.

<u>Program element</u>	<u>FY 1973</u>		<u>FY 1974</u>	
	<u>Funds</u>	<u>Percent</u>	<u>Funds</u>	<u>Percent</u>
	(thousands)		(thousands)	
Nonconstruction	\$ 370	13	\$ 560	20
Construction	1,247	45	1,200	42
National office plans, programs, and management support	<u>1,183</u>	<u>42</u>	<u>1,080</u>	<u>38</u>
Total	<u>\$2,800</u>	<u>100</u>	<u>\$2,840</u>	<u>100</u>

In addition to the funds allocated directly to the nonconstruction program, an indeterminable portion of the funds allocated to national office plans, programs, and management support applies to the nonconstruction program element. Also, according to the Department, during fiscal years 1973 and 1974 more than 80 percent of the time spent by OFCC's Program Policy and Planning staff (one of eight offices or staffs within the headquarters office) was devoted to the nonconstruction program element.

As of June 30, 1973, OFCC headquarters had 55 permanent employees, including 14 assigned to the nonconstruction program. As of March 31, 1974, 17 of the 45 headquarters permanent employees were assigned to the nonconstruction program. The OFCC regional offices had 37 and 49 permanent employees as of June 30, 1973, and March 31, 1974, respectively. According to the Department, regional office employees spent almost all of their time before fiscal year 1975 on the construction program.

Because agency compliance programs are generally funded on an overall basis, we had to obtain estimates of the portion of the funding and staffing that applied only to the nonconstruction program. Based on these estimates about \$19.2 million and about 1,050 persons were assigned to the nonconstruction programs of the 13 compliance agencies during fiscal year 1973. The compliance agencies estimated that, in fiscal year 1974, the staffing increased to about 1,170 persons and funding increased to about \$21.6 million. (See app. II.) The nonconstruction funding and staffing of DOD and GSA, where we did most of our work, is shown below.

<u>Agency</u>	<u>FY 1973</u>		<u>FY 1974</u>	
	<u>Staff</u>	<u>Funds</u>	<u>Staff</u>	<u>Funds</u>
		(thousands)		(thousands)
DOD	437	\$6,686	517	\$8,580
GSA	118	\$2,065	133	\$2,604

CHAPTER 2

IMPROVEMENTS NEEDED IN

ADMINISTRATION OF THE PROGRAM

The Department's administration of the program has not been adequate. Several areas need improvement, including:

- Assessment of employment gains realized by minorities and women.
- Monitoring of the compliance agencies.
- Guidance to the compliance agencies.
- Training of compliance personnel.

NEED FOR ASSESSMENT OF MINORITIES' AND WOMEN'S EMPLOYMENT GAINS

Nine years have passed since Executive Order 11246 was issued, but the Department does not yet have a fully operational system to measure the Federal nonconstruction contractors' progress in improving the employment of minorities and women.

The Department has implemented a system to assess women's and minorities' progress. Effective March 1973, the compliance agencies were required to submit coding sheets showing employment data by nine basic job categories (e.g., officials and managers, professionals, laborers, etc.) to the Department after each compliance review. When collected and processed, the data would summarize Federal contractors' work forces, goals, and achievements in employing minorities and women. Department officials said that this system would allow the Department to evaluate individual compliance reviews and the compliance agencies' overall efforts by examining the goals established and the contractors' progress in fulfilling those goals.

The Department's system was not fully operational when we completed our fieldwork in October 1974. Problems had been experienced in (1) the receipt of compliance agency

data, (2) correctness of the data received, and (3) processing the data through the computerized reporting system.

Department regulations require that compliance agencies submit coding sheets containing the necessary employment data after each review. However, this requirement is not being met. From July 1973 through March 1974 the 13 compliance agencies made about 8,900 reviews. The Department does not have data showing the number of coding sheets received for this same time but did have data showing that 3,500 coding sheets were received from March 1973 through March 1974. Thus, some compliance agencies were not submitting the coding sheets as required.

From July 1974 through September 1974, the Department examined about 4,600 coding sheets submitted by the compliance agencies from March 1973 through September 1974. On the basis of this examination, the Department rejected about 3,600 because the submissions contained errors or were not compiled in the required format.

DOD developed a computerized management information system to measure the progress of nonconstruction contractors. DOD conducted about 43 percent of the approximately 45,400 reviews the 13 agencies made from July 1, 1971, to March 31, 1974.

DOD summary statistics for contractor facilities reviewed in calendar year 1973 showed that the total number of employees declined from about 4.6 million in 1969 to about 4.4 million in 1973. However, the report also showed that minorities and women experienced increases in employment as a percentage of total employment for almost all job categories.

GSA had not implemented any management system to assess its nonconstruction contractors' progress at the time of our review. However, in February 1975 GSA informed us that it had taken action to establish a system which will enable continuing measurement of the employment rates of minorities and women by the nine major job categories in all contractor facilities reviewed by GSA. In addition, data will be collected which will identify minority and female representation in the personnel actions of hiring,

promotion, and termination taking place in contractor facilities under review by GSA. According to GSA, this system will enable contractor progress to be assessed.

DOD's system, GSA's system, and the Department's system are similar in certain aspects. Each of these systems requires the compliance officers to report current data and prior-year data on the number of males, females, minority males, and minority females employed in each of nine basic job categories in each contractor's work force.

Considering the similarity of these systems, we believe the Department should (1) consider whether any one of the systems or some combination of the three could meet the total program needs of all compliance agencies and (2) accelerate implementation of the system selected. Because the Department does not yet have a fully operational system, the progress of Federal nonconstruction contractors in improving equal employment opportunity is difficult to measure.

In February 1975 the Department stated that the filing of coding sheets by the compliance agencies had substantially increased and that from July through December 1974 about 5,600 coding sheets had been received. However, the Department, on January 20, 1975, released its first report on its system to assess the employment gains realized by minorities and women. This report shows that the Department's system is still not fully operational inasmuch as the report is based on data received from only 655 contractors.

NEED TO INCREASE MONITORING OF THE COMPLIANCE AGENCIES

Nonconstruction contractors employ about 25 million employees, or over 80 percent of the estimated 30 million employees covered by the Executive order. The compliance agencies are allocating most of their staff and making most of their reviews on nonconstruction contractors. Our review indicates that the Department needs to increase its monitoring of the nonconstruction compliance program--particularly in the regional offices.

Under the Executive order the Department is responsible for administering the nonconstruction program, including monitoring the compliance agencies to insure that they are performing in accordance with the order and the Department's guidelines. At the regional offices visited--Chicago, Philadelphia, and San Francisco--the Department's staff devoted virtually no effort to monitoring the compliance agencies' enforcement of the Executive order at nonconstruction contractors during fiscal years 1972, 1973, and 1974 (through March 31, 1974). During the same period, the DOD and GSA regional staffs spent most of their time on the nonconstruction program.

Below are the Department's and the two compliance agencies' allocations of staff to the nonconstruction program in the three regions visited.

Professional Staff (as of March 31, 1974)

<u>Locations</u>	Department of Labor					
	<u>Total</u>	Non- con- struc- tion	DOD		GSA	
			<u>Total</u>	Non- con- struc- tion	<u>Total</u>	Non- con- struc- tion
Chicago (note a)	2	0	48	47	12	9
Philadelphia- Washington, D.C. (note b)	1	0	42	40	22	15
San Francisco (note c)	4	1	20	19	10	9
Total	7	1	110	106	44	33

^aIncludes Cleveland suboffice for the Department.

^bGSA regional office located in Washington, D.C., but responsible for same area as the Department's Philadelphia regional office.

^cIncludes Los Angeles suboffice for the Department.

DOD and GSA staffs, which performed about 59 percent of the reviews during fiscal years 1972 and 1973 and through March 31, 1974, have been increasing. GSA's nonconstruction program increased from a \$1,161,000 program with 48 professionals in fiscal year 1972 to an estimated \$2,604,000 program with 94 professionals in fiscal year 1974. DOD's total field personnel increased from 149 in 1972 to 509 in March 1974. In fiscal year 1974 DOD estimated that \$8,580,000 of the total funds of \$8,845,000 and 402 of the 415 professional staff as of March 31, 1974, in the compliance program were assigned to the nonconstruction program.

The Department determined that its field staff should concentrate on the construction program primarily because it believed that areawide plans in the construction industry were necessary to resolve severe problems of underutilization of minorities and discrimination in the construction crafts. The Department believed that the development and monitoring of areawide plans required central coordination. Another reason cited by Department officials for the emphasis given to the construction program by its field staff was the visibility of construction contractors to the community. When minorities were not utilized on construction sites, it became readily apparent to the community. In order to minimize community pressure, the Department policy was to concentrate on improving minority representation in the construction industry.

Department's evaluations of
compliance agencies' programs

In fiscal year 1972 the Department evaluated the nonconstruction programs at all 13 compliance agencies to determine the agencies' effectiveness in carrying out the program. However, the scope of these evaluations was restricted to work done at each agency's headquarters. These limited evaluations identified certain deficiencies in staffing, training, conducting compliance reviews, and issuing show-cause notices. Recommendations for corrective actions were directed to the compliance agencies.

Since the 1972 evaluations, comprehensive follow-up reviews had been done at only 1 of the 13 compliance agencies--NASA. In April and September 1973 the Department reevaluated NASA's contract compliance program and found several deficiencies, including the failure to follow Department requirements and guidelines. As previously noted, effective August 1, 1974, DOD and AEC assumed most of NASA's compliance responsibility.

In its fiscal year 1975 program plan, DECC indicated that it intends to conduct a formal evaluation of each compliance agency.

Department's review of approved AAPs

The 13 compliance agencies made about 28,700 reviews and approved about 18,900 AAPs of nonconstruction contractors during fiscal years 1973 and 1974 through March 31, 1974. The Department stated that during fiscal years 1973 and 1974 it performed 190 desk audits as part of its monitoring responsibilities. A desk audit consists of such activities as reviewing complaint investigation reports or compliance review reports prepared by compliance officers and providing advice to the compliance agencies on further actions needed.

The Department also stated that these 190 desk audits, with a few exceptions, included an analysis of the contractors' AAPs previously approved by the compliance agencies. However, we were unable to evaluate the adequacy of the Department's reviews of AAPs because in most instances the Department's files did not contain adequate documentation showing the results of its reviews.

The Department further stated that it was taking action to substantiate future reviews of AAPs in its files.

Department's plans to increase monitoring of the compliance agencies

The Department stated in November 1973, during hearings on a supplemental appropriation request, that:

"The Employment Standards Administration [ESA] is aware that the contract compliance program is not meeting all of the goals established for it. We have determined that the most significant obstacle is the lack of resources for ESA to provide the leadership for the compliance agencies envisioned in Executive Order 11246. We must develop our lead agency role if the total contract compliance program is to be effective. To do this, we are requesting 26 positions and \$351,000 for this function."

In December 1973 the request for 26 additional positions received approval and increased OFCC's authorized strength from 104 to 130 employees. As of June 30, 1974, OFCC had 126 employees, including 103 permanent and 23 temporarily detailed to OFCC from other parts of the Employment Standards Administration. Sixty-four of these employees were assigned to the 10 regional offices.

In testimony before the Subcommittee on Fiscal Policy of the Joint Economic Committee on September 12, 1974, the Director of OFCC indicated that the Department staff on the nonconstruction program would be augmented by an additional 17 positions. He also said he had directed that 50 percent of the regional office staff time be devoted to monitoring the nonconstruction programs of compliance agencies.

NEED FOR IMPROVED AND TIMELY
GUIDANCE TO COMPLIANCE AGENCIES

As previously indicated, the Department has prescribed guidelines to the compliance agencies for their use in administering the program. Also, OFCC has provided guidance to compliance agencies on a case-by-case basis concerning some issues. The guidelines prescribed by the Department cover such areas as performing compliance reviews, required contents of AAPs and goals and timetables, confidentiality and disclosure of information obtained from contractors, and testing and selection procedures.

Compliance agencies have indicated, however, that guidance from the Department has not been timely and complete in the following areas.

Areas Needing Improved and Timely Departmental Guidance

<u>Agency</u>	<u>Com- pli- ance reviews</u>	<u>Con- tents of AAPs</u>	<u>Goals and time- tables</u>	<u>Af- fect- ed class</u>	<u>Back- pay</u>	<u>Con- fiden- tial- ity</u>	<u>Employee testing and selections</u>
AEC				X			
USDA			X	X	X	X	
AID			X	X	X	X	
Commerce	X	X	X	X	X	X	
DOD	X	X	X	X	X	X	
GSA	X		X	X	X	X	X
HEW	X	X	X				
Interior	X		X	X	X	X	X
Trans- portation		X		X	X	X	
Treasury				X	X	X	
USPS				X	X		
VA	X			X	X		

Affected-class identification
and related remedies

Eleven of the 13 compliance agencies cited a need for improved guidance on affected-class problems and related remedies. "Affected class" refers to employees who have been discriminated against and continue to suffer the effects of that discrimination. Revised Order No. 4 states that a remedy for members of an affected class must be provided for a contractor to be found in compliance. Neither the order nor any other Department guidelines establish specific criteria for remedying affected-class problems. According to a Department official, remedies can include revised transfer and promotion systems and financial restitution such as backpay.

DOL and GSA compliance officers often included affected-class determinations as part of compliance reviews. However, DOD and GSA regional officials informed us that they needed additional guidance on remedies. In June 1973 DOD requested the Department to provide guidance on this matter.

Officials of three other compliance agencies said their officers had problems in determining whether affected-class situations existed or whether backpay was needed because the Department had not provided sufficient instructions or guidelines for making such determinations.

Until adequate guidance is provided, compliance agencies will be reluctant to initiate remedies when affected-class problems are identified--notwithstanding the fact that such remedies as backpay relief could act as strong deterrents to discrimination.

The Department issued a memorandum to all compliance agencies in May 1974 explaining its contract compliance program priorities and plans, including issuing new or revised regulations on affected-class, backpay relief, and testing and selection procedures during fiscal year 1975. In July 1974 the Department circulated proposed guidelines on selection procedures to the agencies for comment, and the Department stated that it was working with the Equal Employment Opportunity Coordinating Council on the guidelines. Also, the Department's plans called for it to normally respond within 10 days after receiving requests

for specific guidance or clarification from compliance agencies. As of February 1975 the Department had not issued the new or revised regulations.

NEED FOR IMPROVED TRAINING OF
COMPLIANCE AGENCY PERSONNEL

From time to time the Department conducts and participates in training activities for compliance agency personnel. For example, in 1974 the Department held a training session for all compliance agencies concerning newly issued Department guidelines. The Department also participated in training sessions conducted by seven compliance agencies concerning the new guidelines.

The Department, however, has not established a centralized training program to train all compliance personnel responsible for implementing the program. Centralized training would furnish compliance personnel from different agencies a common base of instruction and should provide for more uniform application of Department guidelines.

Instead, in May 1974, the Department directed each compliance agency to institute training programs to insure that its staff was able to professionally investigate and conciliate in a manner consistent with Department policies and guidelines. Each agency was to insure that its compliance personnel knew all Department regulations, orders, and guidelines. The rationale for assigning training responsibility to the compliance agencies centered around (1) the lack of funds to establish a training program and (2) the authorization of only two training officers to conduct OFCC training programs.

Most compliance agency officials informed us that they relied primarily on on-the-job training rather than a formal training program. In our opinion the small size of compliance staffs (see app. II) at most agencies could be a primary reason for this.

The DOD Chicago region has a 2-year, on-the-job training program. A handbook establishes guidelines on the number of hours to be devoted to various topics related to

compliance reviews. During the first year the trainee is usually assigned to a three- or four-man team and performs various segments of the compliance review. An experienced compliance officer and the team leader review all work. During the second year the trainee may conduct complete reviews of smaller contractor facilities.

In the GSA Chicago region, trainees are given 2 weeks of training on the Department's rules and regulations. The new trainee then accompanies an experienced compliance officer on several reviews--usually for 4 weeks--in which the trainee may be involved in as many as six or seven review situations. Following this, the trainee usually conducts compliance reviews on his own.

The Federal Government provides centralized interagency training through the Civil Service Commission for in-house Equal Employment Opportunity programs. EEOC has made known its intentions to establish a training academy to provide professional training for compliance personnel on matters relating to title VII of the Civil Rights Act of 1964. However, in the nonconstruction contract compliance program, each compliance agency must provide staff and facilities to meet its own training needs.

In recent testimony before the Subcommittee on Fiscal Policy of the Joint Economic Committee, GSA's Director of Civil Rights stated that the current training program was not the most desirable and referred to the duplication of nonuniform training. He proposed that the Civil Service Commission be authorized to provide the necessary basic, advanced, and executive level interagency contract compliance training. He said centralized training would help to:

- Insure maximum productive use of available training facilities.
- Reduce substantially the cost for each contract compliance trainee.
- Achieve centralized planning and standardized execution as well as evaluation of the contract compliance training effort.

---Establish a minimum acceptable quality of training for a well defined and steadily increasing training demand.

As will be discussed in chapter 3, our review disclosed several weaknesses in the compliance agencies' implementation of the nonconstruction program--including the approval of AAPs which did not meet the Department's guidelines. We believe these weaknesses are partly attributable to the need for more effective training of compliance officers.

The Director of OFCC agreed that a centralized training program would help to insure that compliance agencies were uniformly implementing the OFCC nonconstruction program requirements. He stated that because of the small size of most of the compliance agencies, OFCC's responsibility should be to provide the training necessary for implementing an effective program. He also stated that the training responsibility was assigned to the compliance agencies instead of to OFCC because funds were insufficient to establish a training program.

CONCLUSIONS

The Department must improve its role as a lead agency if the total contract compliance program is to be effective. A current assessment of nonconstruction contractors' progress in improving their employment of minorities and women is needed.

The Department's monitoring of the nonconstruction program must be an integral part of its lead agency role since the majority of the compliance agencies' efforts are concentrated in the nonconstruction program and most of the workers covered by the Executive order are employed by nonconstruction contractors.

Until the Department provides improved and timely guidance to compliance agencies, the adequacy of compliance reviews performed will remain a problem. (See ch. 3.) Centralized training is needed to supplement on-the-job training and to better prepare compliance officers to administer the program in accordance with Department guidelines.

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

We recommend that the Secretary:

- Accelerate implementation of a system to measure the progress of nonconstruction contractors and to assess program shortcomings in increasing and advancing minorities and women in the work force.
- Place greater emphasis on monitoring the nonconstruction program.
- Provide adequate and timely guidance to compliance agencies, especially in areas where agencies have requested assistance to perform more complete compliance reviews.
- Establish training courses for compliance officers. As a supplement to on-the-job training, centralized training should be offered to compliance officers from all compliance agencies.

CHAPTER 3

PROGRAM IMPLEMENTATION BY COMPLIANCE AGENCIES

Several weaknesses in the compliance agencies' implementation of the nonconstruction program were:

- At least two compliance agencies, DOD and GSA, were approving AAPs that did not meet Department guidelines.
- Some compliance agencies were reluctant to initiate enforcement actions and their conciliations with contractors exceeded Department time limits.
- Of the 13 compliance agencies, 12 had not identified all contractors for which they were responsible.
- Most compliance agencies were not reviewing an adequate proportion of the contractors for which they were responsible.
- Some compliance agencies were not always conducting the required preaward reviews and some contracting agencies were awarding contracts without requesting compliance agencies to conduct preaward reviews as required by Department guidelines.

AAPS NOT MEETING GUIDELINES

DOD and GSA approved AAPs that did not meet the Department standards of Revised Order No. 4, issued in December 1971. To meet the order's standards for acceptability, an AAP must include specific types of data, including (1) analysis of the contractor's work force to determine the utilization of minorities and women, (2) identification of job classifications in which minorities and/or women are being underutilized, (3) goals for improving the employment of minorities and women when a contractor is found to be deficient, i.e., when the contractor is employing fewer minorities and/or women than would reasonably be expected considering their availability within an area where the contractor could be expected to recruit, and (4) timetables for achieving those goals.

According to the Department's guidelines, if contractors follow this program, they should be able to increase the utilization of minorities and women at all levels and in all deficient segments of their work forces.

To determine whether AAPs approved by DOD and GSA met the Department's guidelines, we analyzed a random sample of 120 approved during the first 9 months of fiscal year 1974--20 by DOD and 20 by GSA in each of the 3 regions reviewed.

Analyses of Approved AAPs

<u>Region</u>	<u>GSA</u>			<u>DOD</u>		
	<u>Number reviewed</u>	<u>Not meeting guidelines</u>		<u>Number reviewed</u>	<u>Not meeting guidelines</u>	
		<u>Num- ber</u>	<u>Per- cent</u>		<u>Num- ber</u>	<u>Per- cent</u>
Chicago	20	13	65	20	3	15
Philadelphia- Washington, D.C.	20	16	80	20	4	20
San Francisco	<u>20</u>	<u>13</u>	65	<u>20</u>	<u>5</u>	25
Total	<u>60</u>	<u>42</u>	70	<u>60</u>	<u>12</u>	20

Concerning AAPs which we determined did not meet Department guidelines, GSA regional officials agreed with our analyses in 25 of 42 cases and DOD regional officials agreed in 10 of 12 cases.

The most frequently noted types of deficiencies disclosed by our analyses are listed on the following page.

Deficiencies in Approved AAPs

<u>Deficient areas</u>	<u>Number of AAPs</u>			<u>Total</u>
	<u>Chicago</u>	<u>San Francisco</u>	<u>Philadelphia-Washington, D.C.</u>	
Breakdown of job categories	12	9	10	31
Goals and timetables	15	11	3	29
Work force utilization analysis	16	16	9	41

In AAPs that did not contain a sufficient breakdown of job categories, we found, for example, that an AAP showed 1 contractor employed 49 officials and managers. However, the AAP did not show the number of employees by race and sex in each of the different types of job classifications within the category entitled "officials and managers."

We noted that on May 17, 1972, the Deputy Director of GSA's Office of Civil Rights sent a memorandum to all GSA regional directors of civil rights which stated, in part, that:

"It has come to our attention that contractor Affirmative Action Plans are being accepted which contain utilization analyses and goals and timetables identified by EEO-1 categories such as Officials, Managers, Professionals, etc.

"This practice is not in compliance with [OFCC's] Revised Order No. 4 which states in Section 60-2.11, Required Utilization Analysis, that the contractor must do an analysis of all major job classifications at each facility to determine if women and/or minorities are being underutilized.* * *

"Underutilization analyses and goals established by EEO-1 category are often meaningless. For example, the category of officials & managers usually includes company presidents and keypunch supervisors which certainly are not jobs with similar content, wage rates and opportunities. Further, if the contractor establishes a goal of two females in Officials & Managers, it is not clear if the goal is in an executive position or if it means two more keypunch supervisors. If it is the latter, this is not really an affirmative action goal as it is probably an area where females are utilized exclusively."

Although Department guidelines require AAPs to be based on job classifications, GSA representatives questioned the reasonableness of requiring small facilities to prepare AAPs using job classifications rather than the nine broad EEO-1 categories.

Another type of deficiency noted was that AAPs did not contain goals and timetables when appropriate. For example, a contractor identified a job in which, on the basis of their availability within an area where the contractor could be expected to recruit, it was determined that the contractor was underutilizing minorities and women.

However, the contractor either failed to set goals or set goals which were not specific enough to correct the underutilization.

A third type of deficiency noted was that AAPs did not contain adequate work force utilization analyses. For example an AAP showed the total number of employees in a particular job classification by race and sex, but the AAP did not adequately analyze the total number of persons in the community with that particular job skill to determine if the contractor employed fewer minorities and females in that job classification than would reasonably be expected.

Department guidelines require that in determining whether minorities and women are being underutilized in any job classification the contractor must consider certain

specific factors. In the case of an analysis of the utilization of minorities, for example, the contractor must consider at least the following factors:

- The minority population of the labor area surrounding the facility.
- The size of the minority unemployment force in the labor area surrounding the facility.
- The percentage of the minority work force as compared with the total work force in the immediate labor area.
- The general availability of minorities having requisite skills in the immediate labor area.
- The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit.
- The availability of promotable and transferable minorities within the contractor's organization.
- The existence of training institutions capable of training persons in the requisite skills.
- The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

Representatives of GSA, DOD, and selected contractors stated that one persistent problem in developing acceptable AAPs was that the data necessary to analyze all of the eight factors listed above was not always readily available.

A deficient AAP does not, by itself, indicate that a contractor is not committed to the Equal Employment Opportunity program. However, developing AAPs which contain adequate utilization analyses and set goals and timetables when appropriate is the initial step in improving the contractors' positions. These plans can be used to evaluate a contractor's progress in achieving or making a good faith effort to achieve the goals and timetables established.

Suit filed by public interest group
alleging approval of deficient AAPs

The Legal Aid Society of Alameda County, California, is a federally funded law project which represents low-income minority persons in Alameda County. Part of its duties involve overseeing the enforcement of laws relating to equal employment opportunity.

In February 1973 the society and others filed a complaint against the Department and USDA seeking, in part, enforcement of the requirements of the Executive order. Subsequently, the society filed a motion for partial summary judgment with the U.S. District Court for the Northern District of California to stop USDA from approving AAPs of contractors in Alameda County which did not comply with Department regulations. The motion claimed that 29 AAPs approved by USDA in Alameda County from August 1972 to January 1973 were actually violating Department regulations.

Some of the violations cited were similar to the deficiencies noted during our review of DOD- and GSA-approved AAPs. Generally, the violations dealt with (1) inadequate utilization analyses to show each job category in which the contractor was deficient in utilizing minorities and women, (2) failure to establish adequate goals and time-tables to correct each deficiency, and (3) failure to include additional ingredients required by Department regulations--such as the availability of promotable or transferable minorities and females within the contractors' organizations and the failure to include commitments to undertake specific programs for training minority and female employees.

On June 20, 1974, the court ruled in favor of the society and required USDA to rescind its approval of the 29 AAPs and to institute enforcement proceedings against the contractors. A USDA official informed us in March 1975 that USDA had taken action to comply with the court ruling.

AAPs not prepared

Department guidelines require Federal contractors to develop and maintain current AAPs, with certain exceptions.

These guidelines refer to prior problems of compliance agencies in that many contractors did not have AAPs on file when a compliance investigator visited a contractor establishment.

As shown below, our analysis of the show-cause notices issued by the 3 DOD and GSA regional offices showed that 56 of the 148 notices issued from July 1, 1972, through March 31, 1974, dealt with the contractor's failure to prepare a written AAP or update a previously prepared AAP.

Region	DOD			GSA		
	Show- cause notices issued	No AAP prepared or updated	Per- cent	Show- cause notices issued	No AAP prepared or updated	Per- cent
Chicago	40	17	43	11	5	45
Philadelphia- Washington, D.C.	6	4	67	43	12	28
San Francisco	<u>4</u>	<u>3</u>	75	<u>44</u>	<u>15</u>	34
Total	<u>50</u>	<u>24</u>	48	<u>98</u>	<u>32</u>	33

DOD and GSA headquarters officials informed us that contractors were not routinely given the Department guidelines for preparing AAPs. As a result, some contractors may not be fully aware of their equal employment opportunity responsibilities when they receive a Federal contract.

In commenting on this report, GSA stated that there appeared to be a great need to insure that each contractor fully understands exactly what it is expected to do and when this should be done. GSA cited a number of actions it had taken to increase contractors' awareness of their responsibilities under the Executive order (see p. 60).

ENFORCEMENT ACTIONS NOT TAKEN

Compliance agencies are reluctant to initiate enforcement action when contractors are not in compliance with the Executive order; instead, they rely on extended conciliations and negotiations with contractors to achieve compliance. In some instances conciliation exceeded the time limits allowed by the Department.

Department regulations issued in January 1973 state that, except in cases of delays for good cause, an agency must approve a contractor's AAP or issue a show-cause notice within 45 days from the date of the initiation of the onsite investigation.¹ A show-cause notice for non-compliance with the Executive order gives a contractor 30 days to explain why enforcement measures should not be initiated. If the contractor fails to show good cause or fails to remedy the noncompliance, regulations authorize various enforcement measures, including withholding of progress payments, contract cancellation, debarment from future Federal contracts, and referral to the Department of Justice for court action. The contractors must be given the opportunity for a formal hearing before these measures are imposed.

From July 1, 1971, through March 31, 1974, the compliance agencies conducted about 45,400 nonconstruction reviews. A total of 535 show-cause notices were issued, which represented about 1.2 percent of the reviews conducted. Two agencies imposed stronger enforcement actions against 14 contractors. In one case a contractor was debarred from future Federal contracts. Thirteen trucking companies were referred to the Department of Justice for appropriate legal action, and a consent decree has been entered into under which the companies have agreed to stop their discriminatory practices.

DOD and GSA officials said they attempted to persuade contractors to comply with the Executive order and implementing guidelines through conciliation rather than by

¹Regulations effective May 15, 1974, revised the time limit to 60 days from the date of receipt of the contractor's AAP and supporting documentation.

invoking formal enforcement actions. Commerce and Treasury Department officials said they preferred to issue warning letters rather than show-cause notices to contractors which did not fully respond to the program's requirements. The Treasury Department, as of June 1974, was developing written enforcement procedures. According to Treasury officials, these procedures will insure that enforcement actions authorized by the Executive order would be fully used when warranted.

NASA also stressed conciliation over enforcement. The Department made two reviews of the NASA program before re-assigning its compliance responsibility and concluded that NASA was reluctant to issue show-cause notices or take enforcement actions. The last show-cause notice NASA issued was in March 1972.

Prolonged conciliation with contractors

Department regulations provide for conciliation as a way of obtaining compliance with the Executive order, but, as previously stated, compliance agencies must either approve contractors' AAPs or issue show-cause notices within a certain time limit. We noted instances in which GSA had not complied with the time limit.

In the San Francisco GSA region, in 6 out of 10 cases selected, GSA did not comply with the Department's time limit. These reviews were initiated before May 15, 1974, when the regulations were changed to allow compliance agencies 60 days to approve contractors' AAPs or issue show-cause notices. For example, GSA made an onsite compliance review of a contractor on July 19, 1973, but as of August 28, 1974, had not approved the contractor's AAP or issued a show-cause notice.

In another example, one contractor facility where GSA made an onsite review in October 1973 had several deficiencies in its AAP. GSA sent a list of the deficiencies to the contractor in December 1973. The contractor replied twice to the deficiencies, but the GSA compliance officer determined that problems still existed. As of August 1974, this facility's compliance status had been held in abeyance.

pending receipt of additional data. Also, no show-cause notice had been issued and no enforcement action had been taken against this contractor.

In March 1973 GSA issued a memorandum to its regional offices stating show-cause notices should be issued to utility contractors found in noncompliance with Department regulations and that referral to the Department of Justice would be necessary if contractors subsequently refused to comply with the regulations. Our review showed, however, that GSA was not fully complying in all instances with this memorandum. For example, GSA's San Francisco region reviewed a utility contractor in January 1974. GSA officials held a conciliation meeting in May 1974 to discuss deficiencies in the contractor's AAP, but, as of August 1974, the contractor's AAP did not conform to Department regulations. A GSA regional official said that, because the contractor supplied power to certain Federal facilities, he thought a show-cause notice would accomplish nothing and debarment of the contractor could not be considered. Therefore, he planned to continue conciliation until a satisfactory AAP was obtained.

In GSA's Washington, D.C., region, four instances involving utility contractors were noted in which there was extended conciliation after issuance of a show-cause notice. The four show-cause notices were outstanding from 9 to 14 months at the time of our fieldwork. Headquarters officials advised us that conciliations were slow but that imposing stronger enforcement actions, such as debarment of utility contractors, was not practical because they usually were the only suppliers available to the Federal Government.

At the DOD regional offices in Philadelphia and San Francisco, selected case files reviewed did not disclose any indications of excessively delayed conciliation. However, a DOD San Francisco region internal review report issued in April 1974 showed that 33 reviews, or 17 percent of the 195 reviews examined, were in the review process from 60 to 245 days. The report concluded the primary reason some reviews required such a long time to complete was that compliance officers did not prepare and submit their review reports on time. The report cited one case

which was in the review process 186 days and should have resulted in the issuance of a show-cause notice because the contractor was not complying with Department guidelines; however, there was no indication that the compliance officer ever recommended issuing a notice.

In testimony on September 12, 1974, before the Subcommittee on Fiscal Policy of the Joint Economic Committee, the Deputy Assistant Secretary of Defense for Equal Opportunity indicated that, during the program's formative period, the accepted practice was to focus upon conciliation and negotiation between DOD and the contractor. He added that, since the program had matured, DOD no longer anticipated protracted periods of conciliation and negotiation.

We believe compliance agencies should take enforcement action against contractors found in noncompliance with Department regulations and rely less on conciliation and negotiation. The almost nonexistence of enforcement actions taken could imply to contractors that the compliance agencies do not intend to enforce the program.

Although we believe the compliance agencies should more effectively meet their responsibilities under Executive Order 11246 and the implementing regulations, we again note that Revised Order No. 4 may be in violation of Federal procurement law, since it should set forth more definite standards and criteria to apprise prospective bidders of the basis on which their compliance with the equal employment opportunity requirements will be judged.

CONTRACTOR UNIVERSE NOT IDENTIFIED

Department guidelines provide that each compliance agency is responsible for insuring that contractors in its assigned area comply with the Executive order. However, the Department has not developed a method or system to identify all contractor facilities for which each compliance agency is responsible.

Headquarters officials at 12 of the 13 nonconstruction compliance agencies advised us that they did not have complete information on the identity of all contractor facilities for which their agencies were responsible. GSA and DOD

officials at the three regions we visited also said they did not have complete information on all contractor facilities in their regions.

NASA officials stated that they had complete information. However, NASA was responsible only for contractors having NASA contracts and located on or near NASA installations.

At present no single source of information within the Department identifies all contractors subject to Executive Order 11246. The Department estimates that approximately 275,000 Federal nonconstruction contractors are subject to the provisions of the Executive order. For many years the Department's goal has been to obtain a complete list of all Federal contractors. However, at the time of our review, the Department did not have this capability.

A 1972 DOD study on the implementation of the contract compliance program specifically addressed the problems caused by the lack of complete contractor information. The study pointed out that a great amount of time and effort was often required to determine whether or not individual contractors were holding or have held Federal contracts. The study indicated DOD believed it had reasonably good information on DOD contractors but little or no information on contracts awarded by other agencies in DOD-assigned industry codes.

The study further stated that, in addition to the time lost in trying to identify Federal contractors, there was reason to believe that many contractors were never identified and thus never reviewed. The study concluded that all compliance agencies urgently needed a comprehensive list of Federal contractors.

Current Department efforts in identifying contractors subject to the Executive order center on a joint Department-EEOC reporting form (Employer Information Report). All employers with 100 or more employees and subject to title VII of the Civil Rights Act of 1964 and/or Executive Order 11246 are required to submit the reporting form yearly. The Department has the reports compiled by industry and distributes the lists to the compliance agencies. The

Department estimates that about 275,000 nonconstruction contractors are subject to the provisions of Executive Order 11246; however, according to a Department official, the lists include only about 92,000 contractors. The lists are distributed to the compliance agencies about a year after the contractors complete the reporting forms. This delay was attributed to the time needed to compile the lists.

In June 1974 DOD informed the Department in a planning document that the development of a better workloas universe by the Department was a matter which deserved the highest priority. DOD stated that estimates were not helpful and that what was needed was definite information that a contractor was in a specific industry code and had a Federal contract subject to Executive Order 11246. In testimony on September 11, 1974, before the Subcommittee on Fiscal Policy of the Joint Economic Committee, the Director of GSA's Office of Civil Rights stated that over 1.1 million out of a total of approximately 2.6 million business establishments in the United States were included in the industry codes assigned to GSA. The GSA official indicated, however, that no single source listed all those which had Federal contracts. Without knowing all contractor facilities for which it is responsible, the compliance agency cannot systematically select for review those which offer the most potential for improving equal employment opportunity.

OFCC, in an October 1974 memorandum to all compliance agencies, pointed out the need for a complete listing which would identify all contractor facilities for which the compliance agencies were responsible. OFCC informed the compliance agencies that OFCC would undertake a study of the feasibility and cost of curing this additional information.

We believe that the Department should take all steps necessary to obtain a comprehensive listing of contractor facilities under each compliance agency's responsibility.

CONTRACTOR FACILITIES REVIEWED

Most compliance agencies have been unable to review all nonconstruction contractor facilities for which they

estimate they are responsible. The following table shows for each compliance agency the number of compliance reviews performed during fiscal years 1973 and 1974 (through March 31, 1974) expressed as a percentage of the total number of contractor facilities for which those agencies estimate they are responsible.

<u>Small Percentage of Government Contractor Facilities Reviewed</u>			
<u>Compliance agency</u>	<u>Estimated contractor facilities</u>	<u>Reviews performed expressed as a percentage of estimated universe</u>	
		<u>Fiscal year 1973</u>	<u>Fiscal year 1974 (as of March 31, 1974)</u>
AEC	4,140	14	12
USDA	21,200	4	2
AID	1,200	12	4
Commerce	780	28	20
DOD	36,000	25	10
GSA	23,000	13	10
HEW	4,110	9	8
Interior	4,000	19	10
NASA	260	100	79
USPS	19,000	21	3
Transportation	380	8	7
Treasury	6,000	8	6
VA	12,480	1	1
Total	<u>132,550</u>		

Nine of the 13 nonconstruction compliance agencies reviewed less than 20 percent and 3 agencies reviewed 21 to 28 percent of their contractor facilities in fiscal year 1973. The data available for the first 9 months of fiscal year 1974 indicates that the coverage in fiscal year 1974 was about the same as for fiscal year 1973.

In an October 24, 1974, memorandum to the heads of all agencies, OFCC stated that it had reviewed the compliance

agencies' resource requests for fiscal year 1976 and had sought to obtain increases for agencies that were not reviewing an adequate proportion of their universe. OFCC also stated that compliance agencies covering less than 20 percent of their assigned workload were clearly inadequate and recommended an increase of 83 staff-years and about \$1.8 million for the contract compliance program in fiscal year 1976.

In selecting contractors for review, the compliance agencies relied on internally developed selection criteria. GSA's criteria include selection of contractors with past problems, consideration of the status of the local economy, and input from community action groups. According to GSA officials, compliance personnel are encouraged to schedule reviews of several contractors in the same area. Thus, selection may be affected by the proximity to other contractors rather than by the potential for developing opportunities for minorities and women.

In addition to these selection criteria, GSA established a standard that each compliance officer should complete four to six reviews each month. GSA compliance officers in two regions indicated that they often selected small contractors, which required less time to review, so that they would be more likely to achieve the monthly standard. Although Department guidelines do not require contractors with fewer than 50 employees to prepare written AAPs, contractors required to prepare AAPs must prepare an AAP for each facility regardless of size. Eleven of the 40 contractors' facilities whose AAPs we reviewed in these 2 regions had less than 50 employees. Generally, small contractors yield less opportunity for new hires and advancement of minorities and women.

Officials of several other compliance agencies, including DOD, informed us that the size of the contractor's workforce determined the priority of selection--larger contractors were given priority in performing compliance reviews.

Since compliance agencies are reviewing only a small percentage of their contractor facilities, we believe compliance agencies should devote their staff resources to contractors which offer the most opportunities for minori-

ties and women. Although smaller contractors should not be entirely excluded from the review process, the selection system used should provide for selecting such contractors on a sample basis to achieve the necessary coverage.

During October 1974 OFCC informed the compliance agencies that it would attempt to identify additional sources of listings of Federal contractors. Using such listings compliance agencies could advise contractors of their responsibility to prepare AAPs and require contractors to notify them after the AAPs have been prepared. The procedure of requiring notification should encourage contractors to prepare AAPs and evaluate their equal employment opportunity situations even though they may not be selected for review. (See p. 25.)

PREAWARD REVIEWS NOT MADE OR REQUESTED

Some compliance agencies are granting preaward clearances without making required compliance reviews, and some contracting officers are awarding contracts exceeding \$1 million without requesting a preaward clearance from the responsible compliance agency.

Department regulations require that, before the award of a contract of \$1 million or more, the contracting agency request preaward clearance from the responsible compliance agency. If the compliance agency has not performed a compliance review of the contractor within the preceding 12 months, preaward clearance may not be granted unless the compliance agency makes a preaward review and finds the contractor in compliance.

To test adherence to the preaward requirements, we selected 84 contracts, each exceeding \$1 million, which were awarded during fiscal year 1974 by GSA, HEW, and DOD. Compliance responsibility for these contracts was assigned to DOD, the Department of the Interior, and HEW.

The compliance agency or contracting agency did not comply with Department preaward requirements for 25 of the 84 contracts selected (29.8 percent), as shown below.

Compliance agency	Number of contracts			Total
	Complied with preaward requirement	Failed to comply		
		Preaward not requested	Preaward requested but not performed	
HEW	1	7	12	20
Interior	2	0	4	6
DOD	<u>56</u>	<u>1</u>	<u>1</u>	<u>58</u>
	<u>59</u>	<u>8</u>	<u>17</u>	<u>84</u>

For the eight contracts for which preaward clearances were not requested, we could not find, nor could the contracting agency provide, documentation showing that preaward clearances were requested or received. For 17 contracts the contracting agencies requested and received preaward clearances from the compliance agencies; however, the compliance agencies had not made compliance reviews of the 17 contractors during the preceding 12 months and did not make preaward compliance reviews before issuing the clearances.

According to a Department of the Interior compliance official, when a request for preaward clearance is received, a preaward review is not performed, even though the prospective contractor has not been reviewed during the preceding 12 months. He stated that preaward clearances were withheld only if there were outstanding show-cause notices against prospective contractors.

HEW officials informed us in July 1974 that, because only 16 colleges and universities had currently approved AAPs, HEW's policy was to grant a preaward clearance to a school unless it had reviewed the school's AAP, found the AAP deficient, and found that the school was not revising the AAP to correct the deficiencies noted.

An AID official advised us that AID required contractors, during a compliance review, to list their current Federal contracts. As a result, AID found instances of contracts exceeding \$1 million awarded by other Federal agencies.

to contractors under AID's responsibility. These agencies had not requested preaward clearances from AID.

CONCLUSIONS

Efficient implementation of the nonconstruction program by compliance agencies is important if minorities and women are to achieve equality in employment by Federal contractors.

The approval of AAPs that do not meet Department guidelines allows contractors to avoid commitments to improve their equal employment opportunities. Compliance agencies are not following Department guidelines and instead rely on conciliation rather than impose enforcement measures. The almost nonexistence of enforcement actions could imply to contractors that the compliance agencies do not intend to enforce the program.

The program has been hampered because compliance agencies do not know all the contractors for which they are responsible. Most compliance agencies have been unable to review all contractors for which they estimate they are responsible, and contractors not in compliance with the Executive order may be receiving Federal contracts because of the failure of compliance agencies and contracting agencies to follow the Department's preaward requirements.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary:

- Sample and review approved AAPs to insure that compliance agencies are complying with Department guidelines and fully document the results of these reviews.
- Require compliance agencies to take timely enforcement action on contractors not complying with the Executive order.
- Assist compliance agencies to better identify contractors under each agency's assigned responsibility.
- Perform periodic tests to determine whether compliance agencies make preaward reviews and whether contracting agencies request preaward clearances when appropriate.

complaints were considered by GSA at the time the compliance review was performed.

We recognize that there is some coordination and consultation between OFCC, EEOC, and the compliance agencies on various issues, as GSA's comment indicates. However, we believe that our review indicates that there is a need for improved coordination on a routine basis between the Department, the compliance agencies (acting on behalf of the Department in performing compliance reviews), and EEOC to assure that discrimination complaints are considered by compliance officers as a part of performing compliance reviews.

CHAPTER 6

SCOPE OF REVIEW

At the request of the Chairman, Subcommittee on Fiscal Policy of the Joint Economic Committee, and Senator Jacob K. Javits, we evaluated:

- Department guidance to and control over the Federal agencies assigned compliance review responsibility for nonconstruction contractors.
- Compliance agencies' efforts in implementing the Department guidelines for conducting compliance reviews and complaint investigations.
- Application of enforcement measures available to the compliance agencies.
- Coordination of compliance review and complaint investigation activities between the Department and EEOC.

In accordance with the request, we limited our audit to the nonconstruction program, primarily at the Department and two of the largest compliance agencies--GSA and DOD. We made our audit at each agency's headquarters offices and at regional offices in Chicago; Philadelphia; Washington, D.C.; and San Francisco. We did limited work at EEOC headquarters and at EEOC regional and district offices in Chicago, Philadelphia, and San Francisco. We also did limited work at the headquarters offices of the other compliance agencies responsible for administering the contract compliance program for nonconstruction contractors. At these agencies we held discussions with agency officials and accumulated program data.

APPENDIX I

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JOHN PATMAN, TEX., CHAIRMAN
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 R. STARR,
 EXECUTIVE DIRECTOR

Congress of the United States

JOINT ECONOMIC COMMITTEE

(CREATED PURSUANT TO SEC. 16(a) OF PUBLIC LAW 94, 75th CONGRESS)

WASHINGTON, D.C. 20510

January 21, 1974

The Honorable Elmer B. Staats
 Comptroller General of the United States
 U. S. General Accounting Office
 Washington, D. C. 20548

Dear Mr. Staats:

The Joint Committee learned in recent hearings that although major legislation and executive initiatives have been implemented in the last ten years to improve the economic position of women, their position has deteriorated rather than improved in the last decade. It appears that this situation has occurred in part because of the sporadic enforcement of Title VII of the Civil Rights Act of 1964 and Executive Orders 11246 and 11375.

This Committee is, of course, concerned that Government contractors and subcontractors might not be instituting the required actions designed to insure that there is no discrimination on the basis of sex among contractors. The Committee therefore requests that the General Accounting Office undertake a review to evaluate the effectiveness of the management of the Federal contract compliance program as it relates to non-construction industries.

The GAO's review should examine (1) the adequacy of the Office of Federal Contract Compliance (OFCC) guidance to, and controls over, the compliance agencies, (2) the adequacy and consistency of compliance agencies' procedures and practices for conducting pre-award reviews, compliance reviews, and complaint investigations, and (3) the reasonableness and consistency of application of enforcement procedures used by the compliance agencies specifically with respect to sex discrimination. Since it is not feasible to analyze each of the 19 compliance agencies' activities and their interface with OFCC, GAO might wish to consider reviewing the Department of Defense and General Services Administration compliance activities at three or four selected locations throughout the United States such as Chicago, Philadelphia, and San Francisco.

With respect to the Equal Employment Opportunity Commission (EEOC), the Committee is interested in evaluating the performance of EEOC's operations since March 1972, when it received the power to bring suits in discrimination cases. Some of the questions that we would like GAO to pursue in its investigation of sex-based discrimination are:

[See GAO note, p. 67.]

WILLIAM PROTHMIRE, WIS., VICE CHAIRMAN
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 CHARLES H. PERCY, ILL.
 JAMES S. PEARSON, KANS.
 RICHARD S. SCHWEIKER, PA.

(1) the amount and adequacy of staff work devoted to sex-related discrimination complaints and how these compare with total complaints and total staff resources; (2) EEOC's policy in processing complaints -- does it give priority to class action-type complaints or does it handle cases on a first-come-first-served basis; (3) the criteria used by EEOC in deciding which complaints are selected for litigation; (4) the attempts being made to reduce the backlog of complaints; (5) how effectively has EEOC used its power to bring suits; specifically, whether the staffing is adequate in size and expertise to handle the complaints and prepare suits, whether lack of internal organization accounted for the small number of suits brought in 1972 and 1973, and if so, whether problems in the organizational structure have been resolved. When at all possible GAO should separate sex-related discrimination complaints from other EEOC activity in investigating the above questions.

Inherent in your review would be an evaluation of the coordination of compliance activities between the Federal contract compliance program of OFCC and EEOC's program in private industry. Accordingly, we request GAO to also look into the coordination of compliance review and complaint investigation activities between OFCC and EEOC.

It is our understanding that GAO is in the process of conducting an oversight review of EEOC's performance for the Senate Labor and Public Welfare Committee and that your inquiry for us into sex-related discrimination will be a part of this review.

It would be appreciated if GAO would advise the Joint Economic Committee staff on the progress of this review through periodic oral briefings, and prepared a final report when the review is completed in April or May of 1974, if possible. We welcome your assistance in investigating the government's role in combatting sex-based discrimination.

Sincerely,

Martha W. Griffiths
 Martha W. Griffiths, Chairman
 Subcommittee on Fiscal Policy

Jacob K. Javits
 Jacob K. Javits, U.S.S.
 Ranking Minority Member
 Joint Economic Committee

GAO note:

This report discusses the problems in coordination between EEOC and the Department of Labor (see ch. 4) but the other requested information concerning EEOC was developed as a part of GAO's review for the Senate Labor and Public Welfare Committee. This information was previously furnished to the Subcommittee on Fiscal Policy and is not included as a part of this report.

FUNDS AND STAFF DEVOTED TO THE
FEDERAL CONTRACT COMPLIANCE PROGRAM FOR
NON-CONSTRUCTION CONTRACTORS

Agency	FY 1973			FY 1974 (note a)		
	Staff (June 30, 1973)		Funds (thousands)	Staff		Funds (thousands)
	Professional	Clerical		Professional	Clerical	
AEC	52	20	\$ 1,361	58	38	\$ 2,200
Agriculture	33	17	825	33	16	872
AID	8	2	181	9	2	210
Commerce	17	7	585	16	7	489
DOD	323	114	6,686	402	132	8,580
GSA	89	29	2,065	94	36	2,604
HEW	89	35	2,506	114	47	2,384
Interior	36	11	1,625	41	14	1,661
NASA	19	11	552	14	11	540
USPS	32	32	1,445	7	7	380
Transportation	21	7	528	16	7	636
Treasury	18	10	430	21	10	623
VA	8	9	460	9	7	384
Total	<u>745</u>	<u>304</u>	<u>\$19,249</u>	<u>834</u>	<u>334</u>	<u>\$21,563</u>

^aStaffing data is actual as of March 31, 1974. Funding is estimated for all of fiscal year 1974.

REVIEWS CONDUCTED, SHOW-CAUSE NOTICES ISSUED,
AND ENFORCEMENT ACTIONS TAKEN DURING
FISCAL YEARS 1972, 1973, AND 1974 (TO 3-31-74)

Compliance agency	Reviews conducted	Show-cause notices issued		Enforcement actions (not ^a ^b)
		Number	Percentage of reviews conducted	
AEC	1,596	41	2.6	0
Agriculture	1,820	19	1.0	0
AID	287	13	4.6	0
Commerce	604	1	.2	0
DOD	19,621	127	.6	0
GSA	7,071	276	3.9	^c 1
HEW	1,169	3	.3	0
Interior (note b)	1,012	34	3.4	0
NASA	714	1	.1	0
Postal Service	9,684	0	0	^d 13
Transportation	109	10	9.1	0
Treasury	1,112	0	0	0
VA	593	10	1.7	0
Total	<u>45,392</u>	<u>535</u>	<u>1.2</u>	<u>14</u>

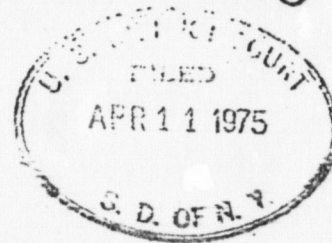
^aDoes not include proposed sanction actions or preaward clearances withheld.

^bExcludes enforcement data for fiscal year 1972 since this data was not available.

^cOne company was debarred after the firm declined to request a hearing. Action was initiated during the period, but debarment was effective in August 1974.

^dThirteen trucking companies were referred to the Department of Justice for appropriate legal action, and a consent decree has been entered into under which the companies have agreed to stop their discriminatory practices.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



LE ROY F. GILLEAD,

Plaintiff,

73 Civ. 1617

- v -

DEFENSE SUPPLY AGENCY, et al.,

Defendants.

#42234

APPEARANCES:

LE ROY F. GILLEAD
1326 Burke Avenue
Bronx, New York 10469

Pro Se

PAUL J. CURRAN
United States Attorney
By: PETER C. SALERNO
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

Attorney for Defendants

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

Plaintiff herein was employed by the Defense Supply Agency, (DSA), Defense Contract Administration Services, New York, as an "Equal Opportunity Specialist". His duties involved

April 11, 1975

the enforcement of the equal opportunity provisions of contracts between the Defense Department and companies contracting with it to supply goods and services. His complaint herein is comprised, for the most part, of a broad critique of the manner in which DSA has chosen to implement the equal opportunity program in connection with its contract compliance activities. It seems that the plaintiff and his superiors were constantly at odds with respect to the scope and impact of the regulations covering the program. Plaintiff believed that he was being hindered from vigorously enforcing the program and that the Agency was being remiss in its contract compliance responsibilities.

Apparently, in an effort to bring this matter to the attention of higher authorities within the Agency plaintiff submitted an "Inter-Office Memorandum" requesting "agency wide reaffirmation as further delineation of the orders, rules, regulations, circulars, letters, etc., concerning the discharge of compliance responsibilities . . ." (Complaint 134.) He followed this up on the following month by filing an "Inspector General Complaint" again accusing the Agency of failing to properly discharge "its contract responsibilities". (Complaint 135.) Shortly thereafter--on December 20, 1971--plaintiff received a performance rating indicating that he had "demonstrated

a great dedication to the contracts compliance program and its objectives" and characterizing his performance as "acceptable". (Complaint ¶40.) However, the evaluation also noted that plaintiff's performance needed improvement "in the area of willingness to accept direction from his superiors on the interpretation of contracts compliance regulations." (Complaint ¶40.) Shortly thereafter the plaintiff, apparently disturbed by this observation, appealed the performance rating. On January 3, 1972 he also filed an administrative complaint alleging that the performance rating constituted "a personnel action of discrimination on the basis of race". (Complaint ¶39.) Two days later his supervisor gave him a "Letter of Warning". (Complaint ¶42.) Plaintiff countered by serving on the supervisor a series of questions to which he demanded answers. As a result of the performance rating, the racial discrimination complaint and the Letter of Warning, apparently three different administrative proceedings ensued.

The appeal from the performance rating was denied on May 3, 1972. (Complaint ¶38.) On June 6, 1972 the Agency apparently ruled that plaintiff was not entitled to the information he sought from his supervisor. (Complaint ¶43.) An appeal from this determination was rejected by the U.S. Civil Service Commission, Board of Appeals and Review, on July 20,

1972. (Complaint #48.) On March 12, 1973 the Commission found that racial discrimination was not a factor in the performance rating, (Complaint #41), and on April 12, 1973 plaintiff instituted the present lawsuit seeking declaratory and injunctive relief.

On September 29, 1973 plaintiff resigned from his position.

In an "amended complaint" filed July 5, 1973 plaintiff purports to bring this action as a class action. The government has moved both to dismiss the action as a class action and to dismiss the entire complaint.

A. Class Action

The class the plaintiff seeks to represent is said to consist of "his colleagues in the Defense Supply Agency (numbering about 200 plus) and all beneficiaries under Executive Order 11246, as amended, (in the millions), with particularity for females (millions) and minorities (blacks, yellows, reds, browns), i.e., Negroes, Orientals, American Indians and Spanish Surnamed Americans, (in the millions)".

It is assumed that this action is being brought as a class action only insofar as it alleges non-compliance on the part of the Agency with the contract compliance procedures. It is difficult to see how plaintiff's charges with respect to the

alleged deficiencies of the intra-agency and other administrative proceedings would have any bearing on the members of the alleged class. Even given this limited delineation, it is evident that the class action suffers serious infirmities. It is apparent that plaintiff is not a member of the class. He is no longer employed by the Agency and therefore he may not sue on behalf of his former colleagues. To the extent that he seeks to represent "all beneficiaries" of the equal opportunity clauses of the Defense Department contracts, it is clear that such a class would only encompass employees of Defense Department contractors or applicants for such employment. 41 C.F.R. §60-1.21 (1974). Plaintiff does not purport to fall within this category. Moreover, under the circumstances present here, the Court cannot imagine how such a diffuse group could present the commonality of interest necessary to constitute a proper class. Lastly, it is axiomatic that in order to maintain a class suit the representative party must demonstrate that he will "fairly and adequately protect the interests of the class". Rule 23(a)(4) of the Fed.R.Civ.P. In this Court's judgment the pro se plaintiff herein has not made this necessary showing. While it is true that to a certain degree he has shown dedication, concern and seriousness in prosecuting this action, these qualities without more will not ensure legally adequate representation. As another Court has noted: "The ordinary layman

will generally not possess the requisite training, expertise and experience to be able adequately to serve the interests of the proposed class." Jeffery v. Malcolm, 353 F.Supp. 395, 397 (S.D.N.Y. 1973).

The government's motion to dismiss the class action allegations is hereby granted.

B. Motion to Dismiss the Entire Complaint

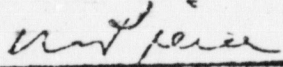
The government has moved to dismiss the entire complaint on the ground that plaintiff's resignation has made the action moot. Plaintiff has argued that in effect his resignation was not voluntary but rather what he characterizes as "constructive termination" in that, apparently, he had no alternative but to resign since he was frustrated from properly discharging his responsibilities. It seems to this Court that plaintiff's resignation was legally voluntary since mere dissatisfaction with one's employment situation will not constitute such a coercive force as to convert a "resignation" into a "termination".

As noted above plaintiff's complaint is essentially bottomed on a running dispute with his superiors as to how the Agency might best fulfill its function. Plaintiff's charge that he was not being allowed to fully enforce Agency policies as he viewed them gave rise to the various administrative proceedings

outlined above and eventually led to his resignation. Indeed, his charge of racial discrimination was supported by the allegation that he had received the somewhat negative performance rating because "since 1969 - and contrary to the direction of his supervisors - [he] continue[d] to lawfully and affirmatively protect the equal employment opportunities of minorities in the consistent discharge of his contracts compliance responsibilities." (Complaint ¶39.) In light of this it is clear that the dispute herein was premised on an employment relationship. Plaintiff wished to perform his duties in one particular fashion and his superiors were not of the same view. In light of plaintiff's resignation--and assuming that the complaint presents judicially cognizable claims--the dispute is now moot and the complaint is therefore dismissed.

SO ORDERED.

Dated: New York, New York
April 10, 1975



LAWRENCE W. PIERCE
U. S. D. J.